

Annual Report 2021

Imprint

Medieninhaber, Verleger und Herausgeber.
Federal Competition Authority
Radetzkystraße 2, 1030 Wien

Layout: Matthias Dolenc (BMDW), Sandra Böhmwalder (BWB),
Dr. Marcus Becka, LL.M. (BWB)

Druck: Bundesministerium für
Arbeit und Wirtschaft

Picture credits: Unless otherwise stated, the BWB holds the
picture rights. All persons depicted have given their
consent to their use.

Cover Page: Adobe Stock

Vienna, December 2022

Preface

The year 2021 was another busy and concomitantly very productive year for Austria's Federal Competition Authority (FCA; in German: *Bundeswettbewerbsbehörde*, BWB).

A total of 653 national merger registrations were submitted to the FCA. With the merger of Facebook (now Meta) and Giphy, a test case for digital markets was submitted by the FCA to the Cartel Court for in-depth examination. In the eBay/Adevinta merger, imposition of important requirements was achieved by the authority in order to preserve regional platforms such as Willhaben, among others. Particularly in these markets, special vigilance on the part of the competition authorities is required, as the course is being set for the future.

In cartel prosecution, investigations were successfully pursued in several cases, and record fines were obtained in court. The FCA carried out 21 house searches, and fines amounting to more than € 55 million were imposed on the basis of applications by the FCA to the Cartel Court.

A total of 8 leniency applications were filed with the FCA, and 78 whistleblowing reports submitted. These figures show that there is confidence on the part of companies and market participants in the FCA and its cooperation programmes. This is an essential element for successful prosecution of collusion.

In the context of the Health Sector Enquiry, the FCA published the third partial report on the supply of medicines from the perspective of competition – a market segment that is of paramount importance, especially in times of pandemic. The E-mobility Sector Enquiry was launched at the end of 2021. Here it is important to point out competitive deficits in good time in order to prevent negative market developments in these future markets.

In addition, the focus of the FCA was once more on advocacy. Again, positions on current issues were published, and opinions on various legislative projects presented. The Anti-Trust Law Moot Court, which was organised for the seventh time in a row, was held virtually. The students enthused with great commitment and knowledge.



Dr. Natalie Harsdorf-Borsch,
LL.M., Interim Director
General for Competition

Great thanks go to the entire FCA team, which in 2021 once again did an excellent job despite the ongoing pandemic and the challenges it posed. I would also like to take this opportunity to express my special thanks to Dr. Theodor Thanner, who has played a decisive role in shaping competition in Austria over the past 15 years.

A handwritten signature in black ink, featuring a stylized 'N' and 'H' with a horizontal line extending to the right.

Dr. Natalie Harsdorf-Borsch, LL.M.,
Interim Director General for Competition

Content

1 General Part	7
1.1 The Federal Competition Authority	7
1.1.1 Interim management of the FCA.....	9
1.1.2 New allocation of business / rules of procedure and establishment of units.....	9
1.2 The Competition Commission.....	11
1.3 The Federal Cartel Prosecutor	12
1.4 Impact orientation and objective of the FCA	13
1.5 The FCA and the European Union	14
1.6 The Federal Competition Authority and its development	16
1.7 International cooperation	22
1.7.1 United Nations Conference on Trade and Development (UNCTAD)	23
1.7.2 Organisation for Economic Cooperation and Development (OECD)	24
1.7.3 International Competition Network (ICN).....	25
1.8 GCR Rating Enforcement 2021: FCA once more among the best competition authorities worldwide.....	25
1.9 Amendment of the Cartel Act and the Competition Act	27
2 Competition Advocacy	30
2.1 Publications and lectures.....	30
2.2 Anti-Trust Law Moot Court 2021.....	31
2.3 FCA management met BP Dr. Van der Bellen on the topic of “Ensuring functioning competition”.....	33
2.4 FCA cooperates with the “Computational Antitrust” project of Stanford University, CodeX Center	33
2.5 Exchange of views between FCA and E-Control on the importance of competition in crisis situations	34
2.6 Round table of the FCA, RTR and the Austrian mobile operators.....	36
2.7 Update of the Transaction Value Threshold Guide.....	37
2.8 New provisions to combat unfair trading practices in the agricultural and food supply chain: Implementation of the UTP Directive in the Fair Competition Act.....	38
3 Sector enquiries, monitoring and studies	40
3.1 Third Partial Report of the Health Sector Enquiry on the Supply of Medicines from a Perspective of Competition Law	40
3.2 FCA launches sector enquiry in the field of e-charging infrastructure in Austria	44

4 National mergers	47
4.1 Merger statistics	48
4.2 Pre-notification talks.....	49
4.3 Obligation to report mergers.....	49
4.4 Merger Heise Medien GmbH & Co. KG / Rheinwerk Verlag GmbH.....	49
4.5 Merger Post 102 Beteiligungs GmbH with D2D – direct to document GmbH approved subject to conditions	51
4.6 Merger Fujifilm/Hitachi.....	52
4.7 FUNKE Gruppe/WAZ Holding/Krone: Supreme Court of Austria ruled hypothetical merger registrations inadmissible	53
4.8 Lifting of requirements for Axel Springer / Funke by the Cartel Court	55
4.9 Merger between Recticel and FoamPartner approved subject to requirements	56
4.10 Modification of the requirements in the Transgourmet/Gastro Profi merger	57
4.11 eBay Inc. / Adevinata ASA / eBay Classifieds Group	57
4.12 Metro/AGM merger submitted to Cartel Court for review following market survey by FCA	59
4.13 Facebook, Inc. / Giphy, Inc.	60
4.14 Prohibited implementations or incorrect / misleading information	61
5 Cartels, concerted practices and investigations	66
5.1 House searches	66
5.2 Whistleblowing system	66
5.3 Leniency programme	67
5.4 Ongoing investigations in the construction industry and first proceedings legally concluded with fine of € 45.37 million.....	68
5.5 Investigations in waste management.....	69
5.6 Imposition of a fine on Fond Of GmbH for vertical price maintenance in the distribution of school bags.....	70
5.7 Market power abuse proceedings.....	71
6 Other proceedings and reports.....	80
6.1 Preliminary contract reviews pursuant to §§ 6 et seq of the Austrian Federal Broad- casting Act (ORF-G)	80
6.1.1 ORF preliminary contract review procedure “topos.ORF.at”	80
6.1.2 ORF preliminary contract review procedure for the classical-music online platform “Fidelio”	81

6.2 Österreichische Postbus AG – Opinion of the FCA on the award of the contract....	82
6.3 Opinions by the FCA on legislative projects	83
7 Annexes	88
7.1 File accrual in 2021	88
7.2 Fining decisions in Austria from 2002 to 2021	89
7.3 Merger statistics	96
7.4 List of abbreviations.....	120
7.5 Priority recommendations of the CoCo to the FCA	124

Note: For the sake of better understanding and easier readability, in each case the respectively selected form applies to all genders for all personal designations throughout the entire activity report, unless explicitly otherwise stated.

The FCA 2021

Facts and Figures

Anti-Trust Law Moot Court

Round Tables / Expert Discussions

Third partial report of the Health Sector Enquiry completed
| Launch of the E-Charging Infrastructure Sector Enquiry

653 national and 452 EU mergers

€ 55,617,000 in fines

21 house searches

8 leniency applications

78 whistleblowing reports

1 General Part

1.1 The Federal Competition Authority

The Federal Competition Authority (FCA) was established in 2002 as a monocratically organised apprehension and investigation authority. It is chaired by the Director General for Competition, whose position is independent and not subject to directives.

What are the objectives of the Federal Competition Authority?

- Ensuring functioning competition in Austria
- Elimination of distortions and restrictions of competition
- Merger control as well as
- information and prevention

The bases for achieving these goals are the Austrian Cartel and Competition Act (*Kartell- und Wettbewerbsgesetz*), the prohibition of cartels under Art 101 and the prohibition of abuse of market power in Art 102 of the Treaty on the Functioning of the European Union (TFEU), as well as the EC Merger Regulation (ECMR).

What tasks does the Federal Competition Authority have to achieve the objectives?

- Ensuring functioning competition
- Investigation of suspected or threatened distortions or restrictions of competition
- Prosecution by means of official party status before the Cartel Court and Supreme Cartel Court
- Enforcement of the European competition rules in Austria
- Investigation of industry sectors if and insofar as is suspected that competition in these sectors is restricted or distorted
- Cooperation with regulators
- Provision of administrative assistance to courts and administrative authorities as well as to the European Commission and the competition authorities of other EU Member States

- Issuing of opinions on general questions of competition policy, as well as, in particular, in the context of review procedures on legislative projects and in the enforcement of competition law on questions of competition law and competition policy,
- Submission of applications pursuant to § 7 (2) of the Federal Act on the Improvement of Local Supply and Competitive Conditions, Federal Law Gazette 392/1977, as amended by Federal Law Gazette I 62/2005
- Assertion of claims for injunctive relief pursuant to § 14 (1) of the Austrian Act against Unfair Competition (UWG) and
- Performance of competition monitoring
- Participation in the preliminary contract review according to §§ 6 et seq of the Austrian Federal Broadcasting Act (ORF-G)
- Right to take action within the framework of the Platform-to-Business Regulation (P2B Regulation)

The following instruments for the purpose of fulfilling the tasks are provided for in the Austrian Competition Act (WettbG):

- Obligation of companies and associations of companies as well as natural persons to provide information to the FCA
- Possibility for the FCA to use witnesses and experts in particular
- Inspection of business documents including the authority to make copies or other transcripts
- Performance of house searches (on the basis of a house search warrant issued by the Cartel Court, if necessary with involvement of the security forces) in cases of justified suspicion of serious violations of the Cartel Act or Art 101 and 102 of the TFEU
- Granting of incentives by waiving or reducing fines in case of co-operation under the leniency programme
- Provision and utilisation of administrative assistance to and from national and European authorities inter alia in investigations, service of documents and enforcement of decisions
- Submission of opinions pursuant to § 10 (2) of the Austrian Competition Act
- Whistleblowing system

1.1.1 Interim management of the FCA

After Dr. Natalie Harsdorf, LL.M. had already held the position of Head of Office on an interim basis for 13 months, she was appointed Deputy Director General and Head of Office by the Federal Minister for Digital and Economic

Affairs (*Bundesministerin für Digitalisierung und Wirtschaftsstandort, BMDW*), Dr. Margarete Schramböck, with effect from 1 May 2021.

At the end of November 2021, Dr. Theodor Thanner made the decision not to run for another term as Director General for Competition, and relinquished leadership.

Since 1 December 2021, Deputy Director General Dr. Harsdorf-Borsch has been in charge of the FCA.

1.1.2 New allocation of business / rules of procedure and establishment of units

The structural changes have made it necessary to adapt the allocation of business and the rules of procedure. Three new office units were set up in the office, covering the areas of budget, IT forensics and information.

The budget unit was newly established in September 2021 and supports the strategic annual planning of the budget, as well as the budget management, and performs related tasks in the area of controlling, impact orientation and the handling of various enquiries in the budget area.

Dr. Daniela Trampert-Paparella has been working at the FCA since its very foundation in 2002. Since 2015, she has also been in charge of coordinating the FCA's budgetary affairs.

Dr. Trampert-Paparella graduated with distinction from the University of Vienna in International Business Administration and was subsequently awarded a doctorate in Social and Economic Sciences by Vienna University of Economics and Business likewise with distinction. Thanks to various stays abroad, including her several years as a National Expert at the European Commission, she can build on a wide range of experience.



Left to right: Martin Janda, Natalie Harsdorf-Borsch, Daniela Trampert-Paparella, Gerhard Sieber

The areas of responsibility of the forensics unit, which was established in September 2021, include strategic mission planning and participation in on-site investigative missions, the development of strategies and methods for the optimal electronic evaluation of investigative results, the further development of the security concept for the forensics laboratory, prevention and data security, as well as system and network administration. In addition, the unit is in exchange with other national and European authorities.

Kerstin Fachathaler has been working as an IT forensics specialist at the FCA since 1 July 2016. Since 1 February 2020, she has already been the technical coordinator of the Forensics IT Team. She successfully completed her education at the *Höhere technische Bundeslehr- und Versuchsanstalt Pinkafeld* and has extensive practical experience, including competence in three programming languages. Fachathaler has also completed numerous training courses, including certification as a XERA administrator.

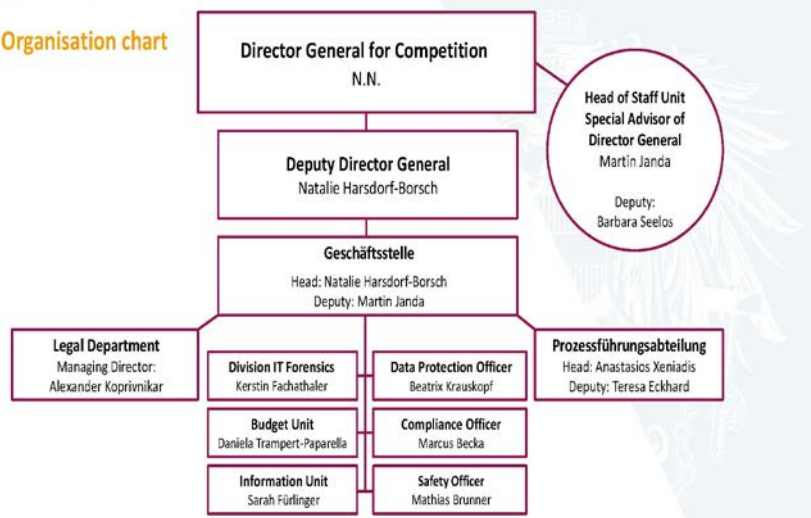
Left to right: Martin Janda,
Gerhard Sieber, Kerstin
Fachathaler, Natalie
Harsdorf-Borsch



Dr. Daniela Trampert-Paparella and Kerstin Fachathaler were appointed heads of the two new units with effect from 15 December 2021. The solemn presentation of the certificates of appointment took place by the acting management of the FCA, Deputy Director General/Head of Office Dr. Natalie Harsdorf-Borsch and Dr. Martin Janda (Head of Staff Unit of the FCA), together with Head of Division Mag. Gerhard Sieber (Präs/A – Personal and Präs/A/7 – HR-Strategy, Compliance and Functions; Federal Ministry for Digital and Economic Affairs).

In addition, the three organisational units of Data Protection Officer, Compliance Officer and Security Officer were added to the business division.

Organisation chart



1.2 The Competition Commission

The Competition Commission (CoCo) is the advisory body of the Federal Competition Authority. It consists of eight members who must possess special economic, business, socio-political, technological or legal knowledge and experience. The members of the CoCo are appointed every four years by the Federal Ministry for Digital and Economic Affairs (BMDW). The Austrian Economic Chamber, the Federal Chamber of Labour, the Austrian Federation of Trade Unions and the Presidential Conference of the Austrian Chambers of Agriculture each have the right to nominate one member (substitute member). The members (substitute members) are not bound by any instructions in the performance of their duties and are subject to official secrecy.

The current term of office is from 2018 to 2022. The Competition Commission is currently chaired by RA Hon.-Prof. DDr. Jörg Zehetner.

Member	Substitute member	Sent by
RA Hon.-Prof. DDr. Jörg Zehetner (Chair) Lawyer at KWR; Honorary Professor at the University of Salzburg	FH-Prof. Dr. Cordula Cerha Institute of Commerce and Marketing, Vienna University of Economics and Business	BMDW
Mag. Maria Mercedes Ritschl (deputy) IV	Mag. Ingrid Schöberl Deputy Area Head, IV	BMDW

Member	Substitute member	Sent by
Dr. Michael Sachs Vice-President of the BVwG	Mag. Dr. Agnes Kügler, MSc WIFO	BMDW
MMag. Dr. Stephan Wiener, LL.M. Office of the Tyrolean Provincial Government	Mag. Georg Konetzky Head of Section IV, BMDW	BMDW
Ing. Mag. Andreas Graf Chamber of Agriculture	Mag. Martin Längauer Chamber of Agriculture	Presidential Conference of the Austrian Chambers of Agriculture
Mag. Helmut Gahleitner Chamber of Labour Vienna	Christian Berger, BA MSc Chamber of Labour Vienna	Federal Chamber of Labour
Dr. Rosemarie Schön AEC	Dr. Winfried Pöcherstorfer LL.M. (LSE) AEC	Austrian Economic Chamber
Mag. Ernst Tüchler AFTU	Mag. Miriam Baghdady, MSc AFTU	Austrian Federation of Trade Unions
As of: 31 December 2021		

The FCA was present at each of the eleven meetings of the Competition Commission held in 2021.

1.3 The Federal Cartel Prosecutor

In addition to the FCA, as a further official party the Federal Cartel Prosecutor, subordinate to the Federal Ministry of Justice, was established in July 2002.

The Federal Cartel Prosecutor is appointed to represent the public interests in matters of competition law. Both the Competition Act and the Cartel Act provide for close cooperation between the official parties not only but especially in the area of merger control. In 2021, this once more turned out very constructive.

The Federal Cartel Prosecutor's annual report is available on the website of the Federal Ministry of Justice.

1.4 Impact orientation and objective of the FCA

The FCA had set itself the following targets for 2021:

Target 1: Improving/maintaining competition

In particular, investigations into competition violations, merger control, as well as European and international cooperation were among the FCA's top priorities. These goals were indeed achieved through the successful performance of investigative actions, effective merger control, and constructive continuation of cooperation with other EU authorities.

Target 2: Building awareness

This objective was characterised by continuation and improvement of the educational work. In order to fulfil its mission of informing the public about its activities, the FCA operates its own website, on the one hand to comply with the legal publication obligations (§ 10b of the Austrian Competition Act) and on the other hand to ensure transparency. Furthermore, the FCA disseminates information via Twitter and YouTube. Increasing transparency by maintaining an informative and clear homepage and continuing effective press work was implemented. The FCA also receives a large number of press enquiries (national and international) on procedures and general economic contexts on a daily basis.

Target 3: Quality management

FCA work is demanding, as the staff are in direct contact with the market (companies and consumers) and have to defend the public interest before the courts in merger and cartel proceedings. In order to perform these tasks successfully, it is necessary for the FCA staff to meet the same quality standards as the legal representation or economic consultation of the companies.

The FCA ensures that the high quality standard is maintained and improved with a customised training programme (ongoing internal training, expert meetings, job rotation, study visits, etc.). In 2021, we were again able to implement and develop a number of measures for staff training and development.

Target 4: Consolidation

Effective and modern anti-trust law enforcement requires constant development of the authority professionally and structurally. An evaluation of its own processes, the assessment of the authority's inputs and outputs and the implementation of the insights gained from this are aimed at making the FCA future-proof for its daily work and the resulting challenges.

Target 5: Digital challenges

Digitalisation affects all areas of economy, including competition. The FCA recognised the developments early on and has been using future-proof methods for several years, both in the investigations – for example through computerised tools in the evaluation – and in the prevention campaigns, up to and including the training of employees of the authority. Since autumn 2021, the FCA has been using the electronic file (ELAK) for its file management. In addition, digital competences were strengthened by the establishment of a separate IT Forensics unit (cf. also 1.1.2 above). Hence, the FCA is well equipped for the digital challenges of the future.

1.5 The FCA and the European Union

Cooperation with the European Commission

Enforcement of European competition rules in Austria has two main aspects. On the one hand, the national competition authorities directly enforce the competition rules of Union law and, on the other hand, the national authorities assist the European Commission in its investigative actions in the proceedings conducted by the European Commission (here: Directorate General for Competition) in application of Union law and are authorised to present their views in these proceedings.

In addition, there is ongoing and close cooperation, combined with a regular exchange of experience and information and the development of best practices within the framework of Regulation 1/2003 to ensure coherence in the decentralised application of Union law, the network of competition authorities set up, the so-called European Competition Network (ECN), instead.

At the European level, in 2021 the FCA participated in the following working groups:

ECN Working Groups	
ECN Director Generals Meeting	ECN Plenary Meeting
ECN Cooperation Issues and Due Process	ECN Merger Working Group
ECN Horizontal & Abuse Working Group	ECN Cartel Working Group
ECN Digital Markets Working Group	ECN Chief Economist Group
ECN Digital Investigations & AI Working Group	ECN Vertical Restraints Working Group
ECN Financial Services Working Group	ECN Pharma & Health Working Group
ECN Food Working Group	ECN Energy Working Group

In addition to these regular meetings of the regular working groups of the European Network of Competition Authorities, numerous other workshops as well as ad-hoc meetings for the exchange of experience regarding legislative topics in the context of the revision of the European competition rules also took place in 2021. Examples include the exchange of experience and information on the status of projects to revise the Group Exemption Regulation and the Guidelines on Vertical Agreements as well as the Commission Notice on the definition of the relevant market, the draft regulation for a Digital Markets Act (DMA) being negotiated in the Council or the planned guidance on the possibilities permitted under competition law for self-employed individuals to organise themselves for collective negotiations with contracting authorities.

As in the previous year, working meetings in 2021 could be held only in virtual format due to the pandemic. However, the necessary technical requirements have been well established in the meantime, so thanks to the reduced organisational and financial effort of working group meetings, a deeper and more regular exchange was possible in some cases, which more than compensated for the limitations of a multilateral discussion resulting from the technical limitations.

Implementation of Directive 2019/1 (ECN+) to strengthen the national competition authorities

The more than two-year period of time for implementing this Directive in national law expired on 4 February 2021. However, the competent Federal Ministries did not submit a first draft for review until 23 April 2021, setting

a comment period that was shortened to three and a half weeks (see also section on FCA comments).

While this draft did not provide for any improvements to the current situation with regard to central issues of the Directive – the independence and resources of the national competition authorities – such as the budgetary security of the FCA or the complete independence in the use of the allocated budgetary funds as well as with regard to the staff, contrary to the title of the Directive an almost unlimited supervisory right of the Federal Minister for Digital and Economic Affairs over the FCA was to be introduced. In addition, restrictions on the FCA to comment on general competition policy issues beyond enforcement in individual cases were envisioned.

The necessary technical adjustments in the area of investigative and decision-making powers as well as regarding sanctioning powers were largely made in conformity with the Directive, albeit in a minimalist manner.

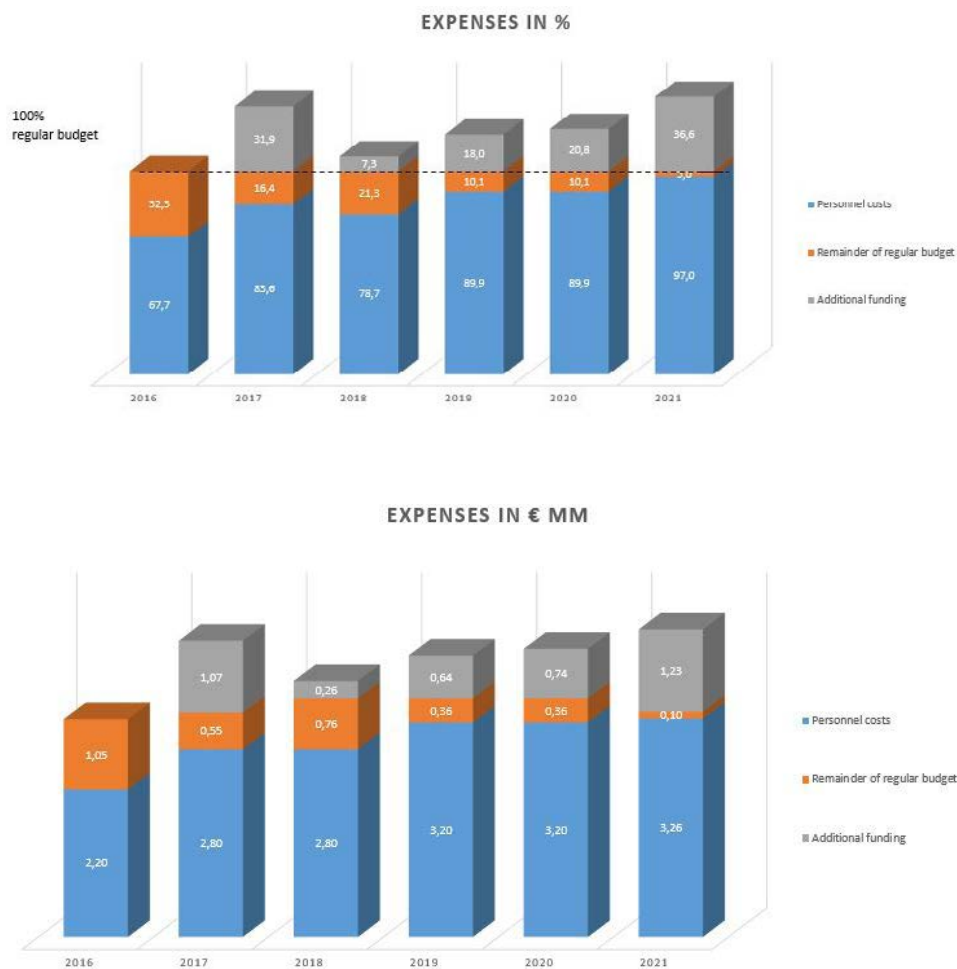
The harmonisation of the rules on leniency programmes and the expanded possibilities for administrative assistance between the national competition authorities were enshrined in law, but the detailed rules were left to ordinances to be issued by the Federal Minister for Digital and Economic Affairs, which entered into force on 24 November 2021.

The government bill, which was modified in several points compared to the draft, was finally passed by the National Council on 7 July 2021; however, due to the refusal of approval by the Federal Council, the act could enter into force only on 10 September 2021.

1.6 The Federal Competition Authority and its development

The budget development of the FCA

For years now, the regular budget provided for in the Federal Finance Act (BFG) has not covered the most basic expenses such as those for staff, rent and costs for general IT infrastructure. In 2021, as much as **97%** of the regular budget had to be spent on covering fixed personnel costs.



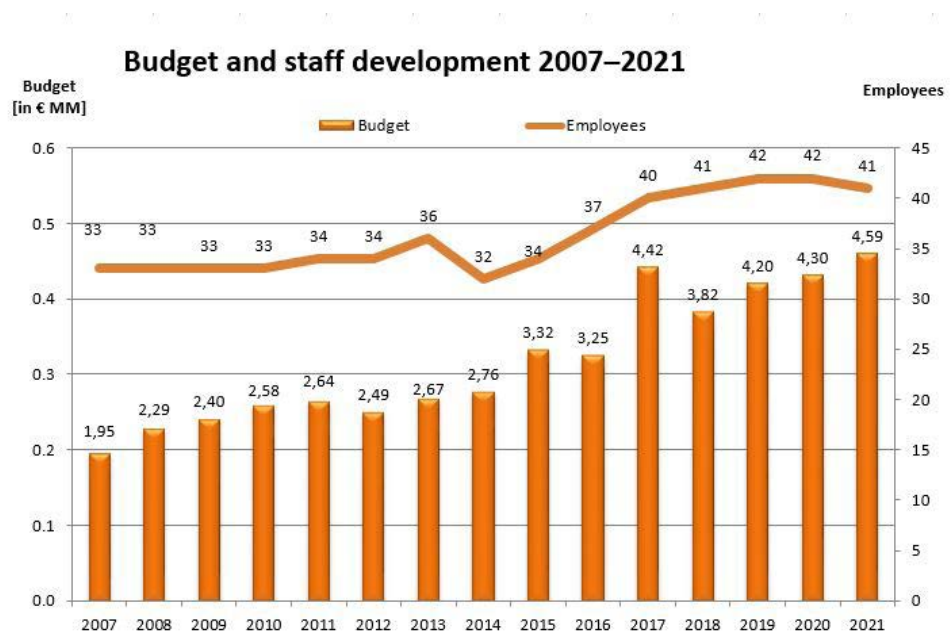
The necessary minimum operation can therefore be ensured only by applications to the Federal Ministry of Finance (BMF) for additional funding due to increased revenue from fines pursuant to § 32 (2) of the Austrian Cartel Act and reallocations. The applications to the BMF can be submitted only when additional revenue is available and thus only after the companies have paid the fines in the course of the year. In 2021, two applications for additional funds totalling € 1.23 million, i.e. **36.6%** of the regular budget, were necessary to ensure minimum operations, whereby the second application could be submitted only in mid-November.

Art 5 (1) of ECN+ Directive 2019/1 provides that Member States shall, as a minimum, ensure that national competition authorities have sufficient financial resources necessary for the effective performance of their tasks and for the effective exercise of their powers in relation to Union law. The insufficient size of the regular budget leads to a high administrative effort and planning uncertainty.

This is in stark contrast to the revenue generated by the FCA's activities. In 2021 alone, the FCA's applications resulted in payments of more than € 55 million in fines, which means that the federal government's income from fines alone in 2021 was **12 times as high** as the FCA's ultimate total budget of € 4.59 million.

Budget and staff development 2007–2021

Source: Activity reports of the FCA



The revenue generated by the FCA

Revenue collected by the FCA for the federal budget from fines or merger registrations does not flow into the budget of the Federal Competition Authority, but into the general federal budget.

Pursuant to § 10a (1) of the Austrian Competition Act (WettbG), a flat fee of € 3,500 had to be paid for a merger registration until the end of 2021. With 653 merger registrations in 2021, this results in revenues of € **2,285,500**.

Fines totalling € **55,617,000** were imposed at the request of the FCA.

Development of employment at FCA

In 2021, a total of 41 people, including 31 case handlers, were working for the FCA at the reporting date of 31 December 2021. Of the 31 case handlers,

six were employed part-time. FCA also employs an apprentice administrative assistant.

After a cut of four (lower-grade) posts in 2020, the number of posts was increased by six (higher-grade) posts by the BMDW in the BFG.

Allocation of employees	
Division Legal	21
Division Economy	8
Division Public Management	1
Division IT Forensics	2

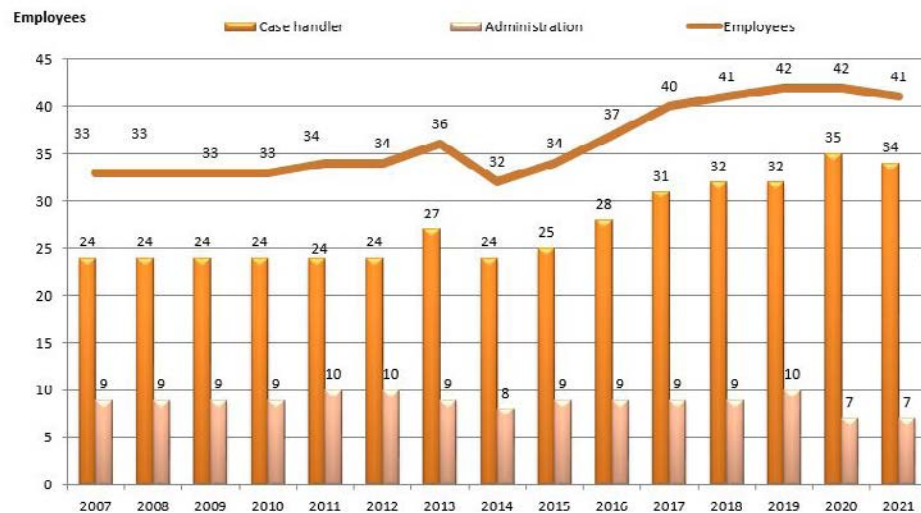
The following positions are or were provided for in the personnel plan of the Federal Finance Act:

Federal Finance Act	Case handler	Administration			Total
		A2/V2	A3/V3	A4/V4	
Year	A1/V1				
2003	13	1	2	3	19
2004	17	1	3	3	24
2005	17	1	3	4	25
2006	17	1	3	4	25
2007 – 2010	24	2	3	4	33
2011 – 2012	24	3	3	4	34
2013	27	9			36
2014	27	9			36
2015	27	9			36
2016	37	9			46
2017	37	9			46
2018	36	10			46
2019	37	10			47
2020	37	7			44
2021	36	7			43

Source: Federal Finance Acts; changes during the year are not taken into account. Explanation: Case handlers including Director General, Head of Office and Deputy, and Head of Staff Section.

Staff development 2007–2021

Budget and staff development 2007–2021



Source: Activity reports of the FCA. Employees including Director General and Head of Office. Administration including one apprentice administrative assistant.

Quality Management – Continuing Education

In 2021, training and further education measures took place in the following areas, among others:

- IT Forensics
- Competition economy
- Compliance
- Data Protection

The FCA has also continued an exchange programme with the European Commission, which allows FCA staff to be assigned to the Directorate General for Competition (DG Competition) so that they can gain experience there.

Two FCA employees have already been able to take up their work with judges in Luxembourg on a longer-term basis due to their high level of expertise. Two employees who are currently on leave are assigned to DG Competition.

In the context of the basic training, two staff members were assigned to other organisations such as the OECD Competition Division and the ECJ Cabinet Dr. Kreuschitz. This promotes above all professional competence as well as

networking among the organisations. Furthermore, two staff members were able to gain experience in departments of the Federal Ministry for Digital and Economic Affairs, and one staff member in the Federal Criminal Police Office.

In addition to the specialisation measures internally within the authorities, FCA employees attended a large number of language courses and seminars in the area of personal development and social communication skills at the Federal Academy of Administration (VAB).

Blockchain Workshop: FCA receives further training in blockchain technology

No longer is blockchain technology used only in the area of financial services, but rather it is already increasingly being applied in numerous other economic sectors as well. Competition authorities will therefore have to increasingly deal with this decentralised technology and the application of anti-trust law in this area.

On 25 May 2021, Dr. Thibault Schrepel (professor at Utrecht University and expert at the CodeX Center at Stanford University), was a virtual guest at the FCA to give a presentation on the topic of blockchain and anti-trust law. The presentation included a technical introduction to blockchain technology, as well as an overview of the potential risks regarding violations of anti-trust law and market power abuses. The effects of blockchain technology, which can have a positive impact on competition, were also discussed in depth.

“Many thanks go to Prof. Dr. Thibault Schrepel for the exciting lecture on blockchain and anti-trust law. From the competition authorities’ point of view, it is important to gain knowledge about the functioning and impact of this technology,” said Dr. Natalie Harsdorf.

Compliance Workshop at the FCA

The FCA takes the issues of compliance, integrity and corruption prevention very seriously. Regular sensitisation of FCA employees is also at the heart of the prevention work.

In addition to the documents already available at the FCA and personal discussions with the FCA’s Compliance Officer, targeted training and workshops are an efficient way of keeping FCA employees up to date and encouraging them to actively participate in the topic of compliance.

In this context, a workshop on compliance and corruption prevention was held at the FCA in December 2021. In addition to theoretical impulses, practical elements such as field reports and case studies were presented and linked with each other.

A long-standing expert from the Federal Anti-Corruption Office (FACO; in German: *Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*, BAK) was invited to the workshop and provided an exciting insight into the work of the FACO through his many years of experience and high practical relevance in the field of anti-corruption.

In addition to the annual evaluation and adaptation of the FCA's risk management system, the FCA's internal Code of Conduct was also updated and an internal compliance whistleblower system set up in order to report potential violations.

DG COMP Anti-Trust Training Cycle – Training for Career Starters

Competition and anti-trust law is a specialised field of law, and national competition authorities apply EU law directly. The training therefore served on the one hand to deepen the basic knowledge and on the other hand to familiarise career starters with the special features of EU law.

From 7 to 11 June 2021, the Directorate General for Competition held several lectures for career starters in European and national authorities on the theoretical bases of European competition and anti-trust law, in particular Articles 101 and 102 of the TFEU, the available investigative tools and remedies as well as the Commission's internal processes.

1.7 International cooperation

International cooperation between competition authorities is an important instrument for eliminating anti-trust law violations and abuses of market power. Be it in the case of transnational offences, when joint investigations are required, in the case of mergers involving several countries, or for the exchange of best practices.

International relations play an essential role especially in cross-border investigations under anti-trust law, as cooperation is mandatory here.

1.7.1 United Nations Conference on Trade and Development (UNCTAD)



The UNCTAD Intergovernmental Group of Experts on Competition Law and Policy (IGE) meeting was held from 7 to 9 July 2021, again in hybrid format. Among the topics discussed were current issues such as competition law in the digital age and competition advocacy in and after the COVID-19 crisis. The work of the working groups on cross-border cartels and modalities of voluntary peer reviews was reported on and their mandate extended. It was decided that at the IGE meeting in 2022, a background document from the Secretariat would support the discussion on aspects that can be learned from the COVID-19 pandemic, focusing on socially important markets. Similarly, the role of competition policy in supporting micro, small and medium enterprises during the economic recovery from the COVID-19 pandemic will be discussed.

Further information can be found on the website <https://unctad.org/meeting/intergovernmental-group-experts-competition-law-and-policy-nineteenth-session>.

Dr. Natalie Harsdorf-Borsch was re-elected as OECD-UNCTAD coordinator for the year 2022 after 2020/2021 (for more details, see also the activity report 2020). Last year, here in particular the working group on cross-border cartels was followed closely. To further deepen the understanding of how developing countries can be most efficiently supported in the detection of (cross-border) cartels and how the working group should be continued accordingly, an ad hoc expert meeting took place on 23 November. Dr. Harsdorf reported on what had proven particularly efficient from the perspective of the OECD countries and the FCA. She took the view, shared by all OECD countries, that promotion of efficient national cartel prosecution is a prerequisite for the prosecution of cross-border cartels, and that developing countries can be supported in particular through technical assistance programmes and discussions on concrete case studies. Another international document with directives and best practices, as called for by some member states, would not be the most efficient means of supporting developing countries because of the abundance

of existing documents, not least the GPP (guiding policies and procedures for international cooperation) adopted by UNCTAD only in 2020. Representatives from Russia, South Africa, Mexico, Italy, the European Commission, Egypt and Peru, among others, reported on their experiences. The working group will resume its work in January 2022 and report to the IGE 2022.

Further information on the ad hoc meeting of 23 November 2021 as well as documents and presentations is available at <https://unctad.org/meeting/ad-hoc-expert-meeting-competition-law-and-policy-cross-border-cartels> for downloading.

1.7.2 Organisation for Economic Cooperation and Development (OECD)



Another forum for the discussion of competition policy issues is the Organisation for Economic Cooperation and Development (OECD). The competition committee and its working groups met twice in 2021. Furthermore, the Global Forum on Competition took place afterwards, which was also attended by non-OECD members. Due to the COVID-19 pandemic, the meetings were held virtually. They therefore had to be shortened in terms of content, but were accessible to a larger group of participants than would otherwise have been possible.

In the course of the meetings, topics of particular relevance to the competition authorities were discussed and experiences of the national authorities were exchanged. The country contributions and a summary of the discussion, which is partly supported by a background paper of the Secretariat-General, can be accessed for each of the topics. Once again, the FCA was able to actively contribute its own experiences in various discussion rounds, for example in the discussion on the topic of compliance. The interesting round table explored the extent to which competition authorities should support corporate compliance efforts, as well as the role of a compliance programme in setting a fine. The FCA also actively participated in the discussion on [environmental considerations](#) and on [News Media and Digital Platforms](#).

Further discussions concerned data portability, interoperability and competition, the concept of potential competition, Methodologies to Measure Market Competition, competition issues in books and e-books and many [other topics](#). Further information can also be found on the homepage of the [OECD/Global Forum](#).

1.7.3 International Competition Network (ICN)

The annual conference of the International Competition Network (ICN) in October 2021 was also held virtually due to the Corona pandemic. This opened up a wide range of discussions to a larger group of participants, including various challenges in the digital age and due to the COVID-19 pandemic, sustainability, priority setting, international cooperation on cross-border cartels, compliance and much more. Dr. Natalie Harsdorf-Borsch moderated the discussion on priority setting, in which colleagues from Hungary, Finland and Peru reported on their experiences. The discussions were also recorded and can be viewed, along with all the corresponding written contributions to the discussions, on the ICN website at <https://icn2021budapest.hu/site/>.

1.8 GCR Rating Enforcement 2021: FCA once more among the best competition authorities worldwide

Every year, competition authorities worldwide are assessed by the trade magazine Global Competition Review (GCR). GCR is an internationally recognised source for competition policy and anti-trust law enforcement. Indicators for the assessment include the preliminary proceedings and decisions in cartel and market power abuse prosecution as well as merger control. Staffing and budget also play a role in the evaluation. Furthermore, experts from the field are asked to assess the performance of the competition authorities.

FCA again with top ranking in the rating of competition authorities

FCA once more received a rating of 3.5 stars out of a total of five for its performance in 2021, maintaining its top ranking from previous years.

In addition to the FCA, the competition authorities of the countries Chile, Canada, Greece, Mexico, New Zealand, Portugal, Russia, Singapore and Spain were also awarded 3.5 stars each. 5 stars were awarded to the European Commission (Directorate General for Competition), France, Germany and the USA.

The GCR report again emphasises that the FCA is the least well-equipped competition authority in Europe in terms of staff and budget. Nevertheless, it does impressive work of a consistently high quality.

The experts also particularly approved of the corona management implemented by the FCA within a very short period of time and the possibility of submitting merger registrations electronically.

“The current GCR Rating Enforcement confirms that we are on the right track. To achieve such a high performance at the top level despite weak staffing and budgetary resources shows that we are doing our job right.

Special thanks go to my staff, without whom such a result would not be possible. We will continue to do our best in the future to promote and ensure competition in Austria and Europe,” explained Dr. Theodor Thanner, Director General for Competition.

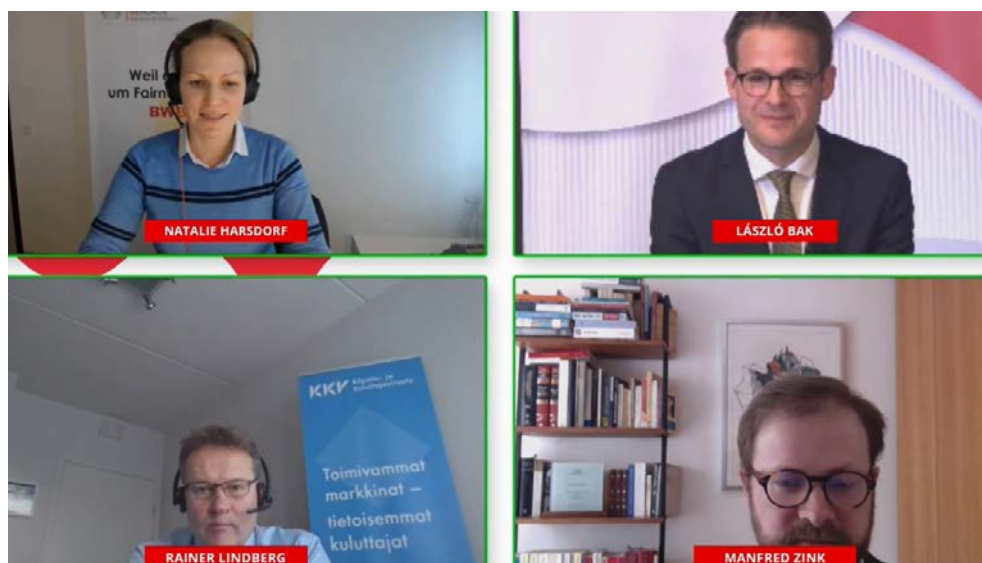
Quotes from the report:

„Austrian Federal Competition Authority is the smallest in Europe to feature in Rating Enforcement. However, that doesn’t stop it from managing an impressive workload.“

„Not only that, but the quality of its analysis in merger reviews and behavioural probes is also complimented by local lawyers, who believe that the agency’s modest size is counterbalanced by the quality of its case handlers.“

„Away from enforcement, the agency is highly regarded by lawyers for its advocacy work. In 2020, it published papers on how it would analyse mergers

ICN Annual Conference



during the pandemic; the challenges that digitalisation poses for competition law; and how it is monitoring communication platforms and digital gatekeepers to tackle weakening competition in online markets, in collaboration with the communications regulator.“

1.9 Amendment of the Cartel Act and the Competition Act

The Austrian Cartel and Competition Law Amendment Act 2021 (in German: *Kartell- und Wettbewerbsrechts-Änderungsgesetz 2021*, KaWeRÄG 2021), promulgated on 9 September 2021 in Federal Law Gazette I No. 176/2021, brought about some changes to the legal framework for the activities of the Federal Competition Authority. These serve predominantly to implement the “ECN+” Directive (see also sections 1.5 and 6.3), but also go beyond this in some cases and concern other areas.

Material changes in cartel and abuse supervision

In § 2 (1) of the Austrian Cartel Act, a “sustainability exemption” from the prohibition of cartels was introduced, whereby the required appropriate participation of consumers is presumed if the profit resulting from the improvement of the production or distribution of goods or the promotion of economic or technical progress makes a significant contribution to an ecologically sustainable or climate-neutral economy.

The concept of relative market dominance was strengthened by transfer to a separate paragraph (§ 4a of the Austrian Cartel Act) and extended to the area of intermediary services on multi-sided digital markets to the establishment of a business relationship.

With the newly inserted § 28a of the Austrian Cartel Act, market dominance on digital multilateral markets can be ascertained in a separate declaratory procedure – independent of concrete abusive conduct.

Changes in the area of merger control

Changes in the area of merger control came into force at the end of 31 December 2021, in deviation from the other provisions of the KaWeRÄG 2021. These concern:

- (i) the introduction of a second domestic turnover threshold (§ 9 (1) 2 of the Austrian Cartel Act),
- (ii) the extension of the material standard of review to include the so-called SIEC criterion (“Significant Impediment of Effective Competition”, § 12 (1) 2 of the Austrian Cartel Act),
- (iii) the extension of the grounds for justification for mergers (§ 12 (2) of the Austrian Cartel Act); and
- (iv) the increase of the application fee to € 6,000 (§ 10a (1) of the Austrian Competition Act).

Corresponding information on Item (ii) must additionally be included into the application for registrations filed on or after 1 January 2022 (§ 10 (1) of the Austrian Cartel Act). In this context, the FCA intends to publish an updated form sheet for mergers in spring 2022.

Changes in procedural law

The scope of addressees of requests for information by the FCA (§ 11a (1) of the Austrian Competition Act) was expanded to include other persons or entities.

In § 29 of the Austrian Cartel Act, procedural violations such as non-compliance with a cease-and-desist order or an interim injunction ((1) 2 lit a), failure to tolerate a house search, or damage to/detachment of a seal affixed by the FCA in the process (lit c) were added to the offences subject to fines.

In the imposition of fines, the liability of parent companies as well as legal and economic successors is also explicitly provided for (§ 29 (2) and (3) of the Austrian Cartel Act).

Furthermore, failure to tolerate a house search may in future also be punished by the imposition of a penalty payment (§ 35 (1) lit d of the Austrian Cartel Act).

In the case of violations concerning the provision of information that are punishable by a decision of the FCA (§ 11a (5) of the Austrian Competition Act), the company or association of companies is now responsible and the penalties are based on the company’s turnover. It is also the responsibility of the company to ensure that the company representatives summoned by means of a notice appear before the authority.

The existing leniency programme will be largely legalised and partly transferred into an ordinance pursuant to § 11b (4) of the Austrian Competition Act, which will in particular comprise the formal content requirements for leniency

applications, markers and summary applications as well as the individual aspects of the cooperation obligation.

§§ 35a to 35e of the Austrian Cartel Act as well as § 14 (3) and § 14a of the Austrian Competition Act and an ordinance of the BMDW implement the provisions of the Directive on Extended Administrative Assistance (esp. service and enforcement) within the ECN.

2 Competition Advocacy

Advocacy refers to the totality of projects, events and initiatives that serve to bring about a change in awareness of a specific issue in society.

The FCA specifically uses competition advocacy programmes to arouse and deepen interest in anti-trust and competition law. This is achieved in particular through preventive and informative measures.

Despite its limited capacities, the FCA tries to offer services in the field of prevention and information.

2.1 Publications and lectures

The FCA's referees regularly publish articles in Austrian and international specialist publications.

The **Österreichische Zeitschrift für Kartellrecht (ÖZK)** offers essays on practice-relevant topics of Austrian and European anti-trust and competition law. The journal contains a comprehensive overview of case law and is a forum for relevant legal experts from academia and practice. The ÖZK publishes essays as well as in-depth reviews of important court and authority decisions in German and English and is published six times a year.

Publications by FCA employees in the ÖZK 2021

Becka/Cavada, Der Kartellrecht Moot Court 2021, ÖZK 2021, Heft 3, 98

Further publications

The FCA's speakers publish not only in the ÖZK but also in other relevant literature.

Publications by FCA employees in other specialist literature 2021

Harsdorf-Borsch, BeckOK KartellR (Hrsg Bacher/Hempel/Wagner-von Papp), 2. Ed. 15.7.2021, Art 101 TFEU.

Harsdorf-Borsch (together with Erika Rittenauer-Stark), Handbuch der Digitalisierung (ed. Zankl), E-Commerce und Kartellrecht, Manz (2021).

2.2 Anti-Trust Law Moot Court 2021

The Federal Competition Authority (FCA), together with the law firm DORDA Rechtsanwälte GmbH and ELSA Austria (European Law Students' Association), organised the Anti-Trust Law Moot Court on 11 June 2021 – for the seventh time running. Like last year, the event had to be held virtually.

The students demonstrated their rhetorical skills and specialist legal knowledge before a fictitious cartel court. This year's facts of the case concerned the area of healthcare apps in connection with the COVID-19 pandemic. This dealt with issues related to market definition or abuse of a dominant position, the use of terms of use and the topic of data as essential facilities.

The FCA congratulates the Best Speaker Maximilian Pfeiffenberger (Team University of Economics) and the Best Team University of Graz (Martin Spielhofer, Fabian Winkler, Franziska Guggi) for their outstanding performance.

The teams were assisted by the following law firms and supported in their preparation for the oral proceedings:

- Team University of Vienna 1, supported by bpv Hügel
- Team University of Vienna 2, supported by Cerha Hempel
- Team University of Vienna 3, supported by Dr. Thyri
- Team University of Vienna and Vienna University of Economics and Business, supported by Reidlinger Schatzmann
- Team Vienna University of Economics and Business Administration, supported by Haslinger Nagele
- Team University of Graz, supported by E+H Eisenberger + Herzog
- Team University of Innsbruck, supported by Binder Grösswang
- Team University of Salzburg/Sigmund Freud University, supported by Taylor Wessing

The jury that assessed the students consisted of:

- Dr. Natalie Harsdorf, LL.M. (FCA)
- Dr. Heinrich Kühnert, M.Jur. (DORDA)
- Mag. Christian Gänser, MA, LL.M. (ECJ)

As in previous years, the best team and the “Best Speaker” were chosen. This year, too, the students excelled in argumentative and rhetoric techniques. The assessment took into account the factual and legal analysis in the pleadings, as well as the teamwork and time management during the oral proceedings.

We were particularly pleased that Prof. Dr. Martin Selmayr (Head of the Representation of the European Commission in Austria) gave the keynote speech at this year's Anti-Trust Law Moot Court.

"I congratulate all participants of the Federal Competition Authority's Moot Court Anti-trust Law 2021 on their equally competent and committed contributions, which have provided many valuable impulses for the innovative application and further development of EU law in the area of tension between data protection and competition law. EU law is a reliable, value-based legal system for citizens and economic operators on our continent. However, as a community based on law, the EU needs independent authorities and courts to ensure that its legal standards are applied fairly, objectively and without discrimination in all Member States. Only then will we be able to continue to live and do business in peace, freedom and security on our continent. Young lawyers in particular should therefore stand up for the cornerstones of this legal order, always challenge them with critical analysis and, if necessary, also defend them. For the EU is the first political unification in history that is held together not by the law of the strongest, but by the strength of the law. And it is important to preserve this even in difficult times," said Prof. Dr. Martin Selmayr in his keynote address.

"Despite the event being held virtually, the joy and commitment of the participants was palpable again this year. Many thanks also to the co-organisers as well as to all the supervisor offices for the great support of the students!" said Dr. Natalie Harsdorf in her closing speech.

Daniel Mert Yilmaz
(ELSA Austria), Natalie
Harsdorf-Borsch (BWB)
and Heinrich Kühnert
(DORDA)



2.3 FCA management met BP Dr. Van der Bellen on the topic of “Ensuring functioning competition”

On 15 April 2021, the Federal President, Dr. Alexander Van der Bellen, and the management of the FCA held a meeting on the topic of “Ensuring functioning competition in Austria”.

“Cartel agreements hamper competition and thus lead to excessive prices, less choice for companies and consumers, and less innovation. Thus they are massively damaging to the national economy,” emphasised Federal President Dr. Alexander Van der Bellen at the meeting with the FCA.



Dr. Harsdorf-Borsch,
Dr. Van der Bellen and
Dr. Thanner

2.4 FCA cooperates with the “Computational Antitrust” project of Stanford University, CodeX Center

The FCA supports the “Computational Antitrust” project led by Stanford University, CodeX Center and Prof. Thibault Schrepel. There are already 55 competition authorities participating in the project.

The aim of this project “Computational Antitrust” is to deal in depth with the topic of law and IT, and to promote the automation of analyses and processes under anti-trust law. “Computational Antitrust” can effectively support companies with the right tools for compliance and evaluation and simplify automation processes such as merger registrations to competition authorities.

Competition authorities can also benefit from this, for example by improved analyses of cartel law infringements, mergers and more accurate data collection, as well as by simplification of processes.

The project started at the beginning of 2021. Future workshops, publications on anti-trust law and information technologies are planned. Due to the rapid changes in digitalisation, competition authorities also need to sharpen their knowledge and experience in this area to ensure effective anti-trust law enforcement. The FCA is therefore a keen supporter of this project.

2.5 Exchange of views between FCA and E-Control on the importance of competition in crisis situations

On 27 May 2021, the FCA and E-Control held a joint exchange of views on the importance of competition in crisis situations and on the independence of public authorities.

New team introduces itself

Director General Dr. Theodor Thanner and Dr. Natalie Harsdorf, who was appointed Deputy Director General in May 2021, received board member Dr. Wolfgang Urbantschitsch and Prof. DI Dr. Alfons Haber, who was appointed to the board in March 2021, for an exchange of ideas at the FCA.

Competition helps to cope with the crisis

Crises affect companies and industries in different ways and also with differing severity. Moreover, there are companies that emerge from crises more “victorious” than others. Competition plays an essential role here in maintaining the balance between the players. This makes it all the more important to have independent authorities that all market participants can rely on, as they provide continuity and stability especially in uncertain times.

FCA and E-Control join forces

In the future, the FCA and E-Control will continue to deepen their excellent cooperation to date in order to meet future challenges together.

“We are very pleased that there is such a constructive cooperation with the FCA, which we would like to expand even further in the coming years. The

further promotion of competition is at the top of E-Control's agenda. For markets to function, strong and above all independent authorities are needed to ensure that the rules of the game are respected. It is good to have a reliable partner at our side here," emphasised Alfons Haber, board member of the regulatory authority E-Control.

"Competition plays an essential role in overcoming crises. The FCA pays special attention to this issue in order to quickly counteract potential negative consequences. I would like to thank the board members of E-Control, Dr. Urbantschitsch and Prof. Haber, for the constructive exchange of ideas, and look forward to further good cooperation," said FCA Director General Theodor Thanner.

In this context, reference may be made to the recommendation of the Competition Commission to treat the energy sector as a priority.



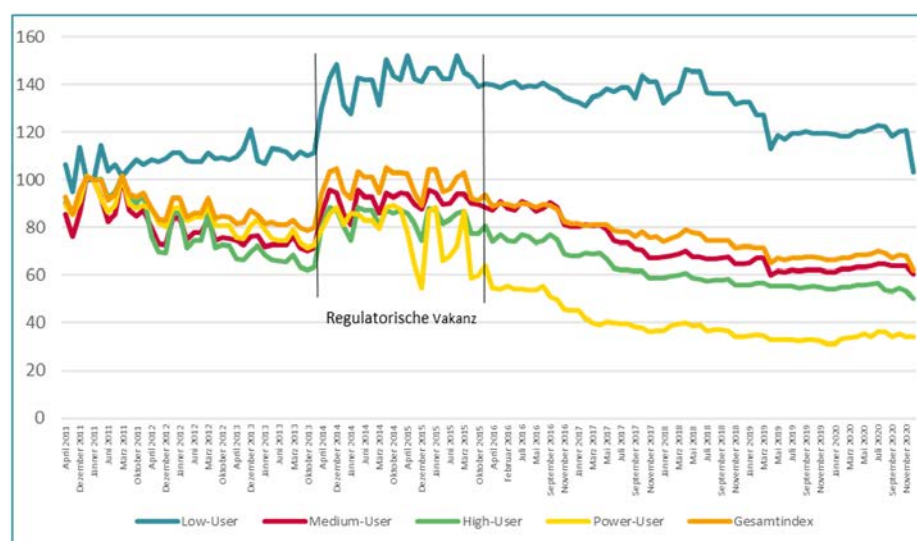
Dr. Urbantschitsch,
Dr. Harsdorf-Borsch,
Dr. Thanner und
Prof. DI Dr. Haber

2.6 Round table of the FCA, RTR and the Austrian mobile operators

On 24 March 2021, a round table was held at the FCA with representatives of the Telecommunications and Postal Department of RTR (physical), the FCA and representatives of the major mobile operators in Austria (virtual).

The starting point for the round table was current market developments and complaints in the mobile communications sector, which were largely induced by the expiry of the so-called MVNO requirements to which Hutchison Drei Austria (H3A) committed itself for 10 years in the course of the merger of H3A and Orange in 2012.

The commitments include access to H3A's mobile network for up to 15 MVNOs at fixed wholesale rates. After a period of proven price increases in mobile tariffs immediately after the merger, this requirement led to the market entry of new MVNOs and thus to a decline in the price level of mobile tariffs (see following figure).



In the course of 2020, the FCA received various complaints from MVNOs. The complaints concerned problems with price adjustments of wholesale services in existing contracts and access to 5G services in accordance with the contract.

The round table was preceded by a press conference on 28 January 2021, at which the head of RTR's Telecommunications and Post Division, Dr. Klaus Steinmaurer, and the Director General of the FCA, Dr. Theodor Thanner, made a statement in favour of competition in the mobile communications sector. It

was stated therein that the two authorities will not allow MVNOs and MVNEs to disappear from the Austrian market again, potentially leading to a step backwards in development towards 3 MNOs on the market. The 5G expansion should not be abused as a cover for a development towards 3 MNOs in Austria.

At the round table, representatives of RTR and the FCA discussed the significance of requirements imposed on the MVNO merger in 2012 and their impact on competition as well as future developments in the mobile communications market with market participants. The problems described were also addressed, and possible solutions discussed. Representatives of the MNOs and MVNOs concerned agreed to continue bilateral negotiations and to submit activity reports to the authorities.

After analysis of the submitted activity reports by RTR and the FCA, guidance was offered by the authorities in bilateral negotiations on still unresolved issues. Progress had been made in some areas. Both authorities are still actively working with the companies involved to find a solution to the problem areas that are still in dispute.

In this context, reference may be made to the recommendation of the Competition Commission to treat the topic of digitalisation as a priority.

2.7 Update of the Transaction Value Threshold Guide

The guidelines on the transaction value threshold in merger control in Austria and Germany published jointly with the German Federal Cartel Office in mid-2018 were adjusted in a few points. In this way, the changes in the Austrian Cartel Act and Austrian Act against Competition Restrictions in the area of turnover thresholds and the previous case law are to be taken into account. The current guide is available at the following link: [Guide on the Transaction Value Threshold](#).

2.8 New provisions to combat unfair trading practices in the agricultural and food supply chain:

Implementation of the UTP Directive in the Fair Competition Act

On 1 January 2022, the amendment to the Federal Act on the Improvement of Local Supply and Competitive Conditions (Fair Competition Act FWBG) will come into force, implementing the **Directive on Unfair Trading Practices in Business Relationships between Undertakings in the Agricultural and Food Supply Chain** (Directive 2019/633, UTP Directive). The aim of the directive is to counter the imbalance in the bargaining power of suppliers and buyers of agricultural and food products, and to protect the supplier as the weaker trading partner. The implementation of the FWBG is consistent in that one of the main objectives of this law has been to protect small and medium-sized suppliers from powerful trading companies.

Agricultural and food products are:

- Products from Annex I to the TFEU (e.g. meat, milk but also cut flowers or fodder)
- Foodstuffs made from such products (e.g. fruit yoghurt)

Suppliers are agricultural producers or a group of such (also producer organisations and their associations), persons and entities who sell agricultural products or food products (e.g. farmers, processors, trade/wholesale).

Purchasers are persons or entities who buy agricultural products or foodstuffs, also groups of such, including “authorities” (processors, traders, purchasing alliances, local authorities). Sales to consumers are excluded.

The **power imbalance** between suppliers and buyers required to apply the new provisions is measured by their annual turnover.

The **core content** of the amendment consists of two lists of prohibited trade practices:

- Annex I to the FWBG contains the so-called “**black list**” with twelve practices that are prohibited in any case and cannot be waived by the contracting parties either (e.g. cancellation at short notice, unilateral amendment of the contract by the buyer, demand for payments that are not related to the sale).
- Annex II contains the “**grey list**” practices that are prohibited unless they have been explicitly agreed upon beforehand (e.g. returning un-

sold products without payment, demanding payment for advertising, marketing).

Contractual clauses containing prohibited practices are absolutely null and void. Existing supply agreements must be adapted to the new legal situation by 1 May 2022.

Enforcement of the provisions on unfair trade practices is entrusted to the FCA, which has far-reaching investigative powers in this context. It may file applications with the Cartel Court for injunctive relief and (from 1 May 2022) for the imposition of a fine of up to € 500,000.

In addition, claims for injunctive relief can be asserted by, among others, the Federal Cartel Prosecutor, the CoCo, the Chambers of Agriculture and the Presidential Conference of the Chambers of Agriculture, as well as by affected companies.

In order to provide confidential **consultation** to suppliers and to enable un-bureaucratic dispute resolution, an independent first contact point will also be created at the Federal Ministry of Agriculture, Regions and Tourism, which is to commence its activities on 1 March 2022.

For information on how to lodge a complaint with the FCA, see here: https://www.bwb.gv.at/kartelle_marktmachtmissbrauch/beschwerdeeinbringung

In light of the amendment to the Federal Act on the Improvement of Local Supply and Competitive Conditions, the FCA's fairness catalogue will be updated in the coming months.

3 Sector enquiries, monitoring and studies

3.1 Third Partial Report of the Health Sector Enquiry on the Supply of Medicines from a Perspective of Competition Law



The third partial report dealt with the supply of medicinal products in Austria from a competition perspective. There have been significant challenges in this area for several years.

The SARS-CoV-2 pandemic underlines the need for secure drug supply in Austria even more strongly. The results of the study cover the period March 2020 to December 2020.

The sector enquiry is based on requests for information from market participants, scientific literature, relevant publications as well as intensive discussions with companies, interest groups, institutions active in the health care market, ministries and health policy spokespersons.

The following topics, among others, were analysed in depth in the context of the examination:

- Risk of drug shortages
- Drug costs in Austria
- Pricing of medicines
- Company takeovers in the pharmaceutical sector
- Ownership of public pharmacies

The topics took into account the Austrian and European legal framework as well as current developments in market conditions.

Results of the sector enquiry

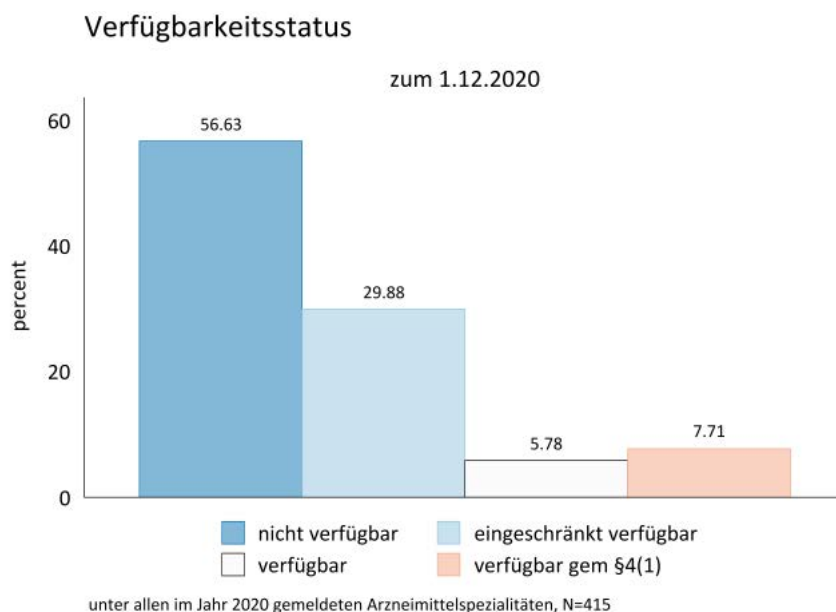
The sector enquiry yielded the following results with regard to ensuring the supply of medicines:

Increased risk of drug shortages in Austria

Drug shortages have vintupled in the European Union between 2000–2018. As of 14 May 2021, 356 medicinal products in Austria were listed in the register for sales restrictions of the Federal Office for Safety in Health Care. Around 85% of these products were considered to be unavailable or only available to a limited extent at that moment. In particular, this affected medicines for treatments of the nervous system and of cardiovascular diseases.

The reasons for this are manifold: Capacity bottlenecks and delays in drug production as well as shortages of required active ingredients or unexpectedly increased demand can be cited as examples.

The impact of the SARS-CoV-2 pandemic on the availability of drugs was also questioned. At the moment of the investigation, the numerous discussions did not reveal any specific indications of supply restrictions in the area of drugs that were linked to the pandemic. However, this can change at any time and therefore requires regular evaluation.



Availability of medicinal products on the basis of the list for reporting restrictions on the distribution of medicinal products

Drug costs in Austria

In an international price comparison, spending in Austria is high at just under € 600 per capita, despite a different price level. Austria ranked 4th in terms of costs compared to 16 other countries.

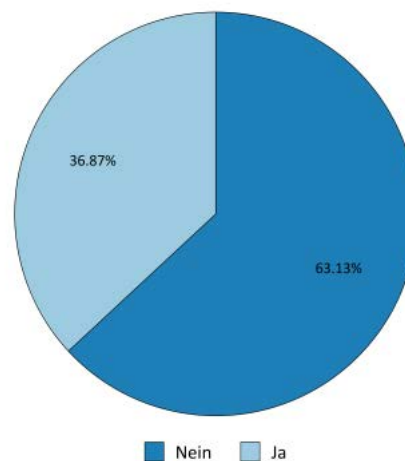
Pricing for medicines and parallel trade

Pricing varies widely across Europe due to national regulations. Price differences between the countries can amount to up to 300%.

Due to these price differences, pharmaceutical wholesalers have an increased incentive to engage in parallel trade and distribute products rather in countries with higher pharmaceutical prices. This can lead to insufficient availability of medicines in countries with lower prices, such as – in some cases – Austria. Parallel trade can therefore be a possible driver of drug shortages. Pharmacies and industry cite the low price level and the lack of attractiveness of the location for the increasing supply restrictions.

Prozentueller Anteil
der Arzneimittel mit
Parallelexportverbot

Parallelexportverbot



N=415

Company takeovers in the pharmaceutical sector

Company takeovers and the resulting increase in market concentration in the pharmaceutical sector can have a negative impact on the supply of medicines, for example through supply bottlenecks. Companies can thereby gain market power and thus increase prices for medicines and minimise cost-intensive research and development. In general, market concentration in the pharmaceutical sector is increasing strongly. Over a period of 30 years, the number of companies has fallen from 110 to about 30.

Participation of the pharmaceutical wholesale trade in public pharmacies

The study found that wholesalers have a strategic interest in participating in public pharmacies, for example in order to generate higher margins. Due to the high logistics costs, public pharmacies each purchase on average 50–90% of their total requirements from a single pharmaceutical wholesaler. From a competition perspective, participations raise concerns because they allow pharmaceutical wholesalers to influence sales and prices at public pharmacies. The shareholdings in public pharmacies have increased continuously since 2013.

“Market concentration in the pharmaceutical sector should be viewed with concern, as this concentration of knowledge can lead to higher prices and supply shortages of medicines. Innovation also suffers as a result. Companies have less incentive to conduct cost-intensive research or to serve research niches. This has a negative impact on consumers, as less product variety could be offered at higher prices,” explained Dr. Theodor Thanner, Director General of the FCA.

Recommendations of the FCA on safeguarding the supply of medicines

Based on the results of the sector enquiry, the FCA has developed 9 points of recommendation, which are intended to create a more competition-friendly environment and thus counteract a shortage of medicines:

- Evaluation of the price components of medicinal products, especially with regard to the statutory mark-ups (wholesale and pharmacy mark-ups).
- In addition to traditional location policy measures, such as the promotion of e-health applications and digitalisation or the improvement of the medical infrastructure, measures such as financial incentives in conformity with European law, e.g. price refunds for medicines or active substances that are demonstrably produced in the European Union, should also be implemented. In this context, GMP conformity, ecology and fair working conditions, for example, should be taken into account.
- Development of a transparent catalogue of criteria for essential medicinal products or active substances on which a special focus should be placed with regard to production in the European Union within the framework of a location policy incentive.

- As a matter of principle, dependence on individual suppliers should be reduced and the reference to several suppliers should be extended. As a result, more competition in this area will lead to greater security of supply. An evaluation of the effectiveness of merger registrations to the FCA based on exceedance of the transaction value threshold, which is aimed in particular with regard to the takeover of start-up companies under the aspect of the protection of innovation potential and innovation competition, can provide support for further legal policy considerations.
- Better coordination and harmonisation of parallel export regulations in the member states.
- Adaptations of legal provisions, e.g. with regard to the expansion of the group of addressees entitled to submit reports under the Regulation on the Supply of Medicinal Products, simplification of the Directive on the Protection of Medicinal Products against Counterfeiting and standardisation of the criteria for certifications.
- Increasing of transparency of producers in the determination of country-specific drug quotas on the basis of a catalogue of criteria.
- Further focusing of existing initiatives related to pharmaceutical care, for example through task forces at national and European level.
- Restriction of the maximum permissible ownership shares of pharmaceutical wholesalers public pharmacies.

In this context, reference may be made to the recommendation of the Competition Commission to treat the health sector as a priority.

3.2 FCA launches sector enquiry in the field of e-charging infrastructure in Austria

The Federal Competition Authority (FCA), with the involvement of E-Control's expertise, has launched a sector enquiry in the field of electromobility (e-mobility). Such an enquiry can be initiated if circumstances indicate that competition in the industry sector in question is restricted or distorted. Specifically, the enquiry will analyse the publicly accessible charging infrastructure for electric vehicles (EVs) in Austria and assess it in terms of competition law. In this context, the FCA has also received complaints from the market.

The climate and energy strategy of the Federal government envisages a CO₂ reduction of at least 7.2 million tonnes or 31% by 2030 compared to 2016. Since the share of transport in total greenhouse gas emissions is around

46%, and about half of this can be attributed to passenger car traffic, such a target can only be achieved if there is a corresponding reduction in passenger cars with internal combustion engines. At present, a substitution towards e-mobility is taking form, so the greatest challenges in the changeover from combustion engines to electric motors lie in the establishment of an efficient, nationwide and safe charging infrastructure as well as in the upgrading of the electricity grids.

Procedure for the sector enquiry

The sector enquiry will be based on surveys of market participants, scientific literature, relevant publications and intensive discussions with stakeholders such as companies, interest groups, institutions and authorities (especially with E-Control).

In addition to the presentation of the initial situation and the current situation of the e-charging infrastructure, identification of the legal bases, a delimitation of the market, an identification of important market participants and a survey of the competitive situation are to be carried out. The aim is to identify any significant restrictions on competition and to derive recommendations from this in order to work towards ensuring that functioning competition ensures a consumer-friendly and inexpensive supply for users in the future, already during the transformation process.

The sector enquiry will also take comparative account of developments in selected neighbouring states. The German Federal Cartel Office is also currently conducting a sector enquiry on the topic of e-charging infrastructure. The UK Competition Authority (CMA) published a relevant investigation in July this year.

More competition leads to better care and quality

Studies show that a certain degree of competition can lead to better care and improved quality of products and services. The FCA therefore wants to help identify (potential) restrictions and distortions of competition and increase competition in the market.

Objectives of the sector enquiry

The establishment of a nationwide e-charging infrastructure, which is offered by charging-point operators and accepted by consumers, is a prerequisite for the success of e-mobility in Austria. With the sector enquiry, the FCA would like to point out possible competition problems in the area of e-charging infrastructure in order to contribute to a successful further expansion in Austria.

Fair and diverse competition increases the attractiveness of the e-charging infrastructure for customers through transparency, low-threshold and rapid access, choice, and reasonable prices, and thus contributes significantly to accelerating the conversion of road transport to CO₂-reduced mobility.

As this is still the initial phase of relatively new business models, care must be taken on the one hand to ensure that innovative business models can develop, and on the other hand to counteract the potential regional or supra-regional monopolisation of providers in good time. In the medium term, this would be associated with lock-in effects, developments that inhibit innovation and quality, as well as reduced productivity and ultimately a loss of welfare. The FCA will therefore also intensively address the question of which structural and, if necessary, sovereign framework conditions are required for a competition-friendly environment in the e-charging infrastructure.

The results of the sector enquiry will be presented in a final report.

4 National mergers

In 2021, a total of 653 mergers were reported.

651 cases (equivalent to 99.7% of the notified mergers) could be concluded in the four weeks of procedure phase I. As a rule, mergers are approved by the expiry of a deadline or by an audit waiver. Of the 651 cases, 6 were released with Phase I requirements.

Two cases (0.31%) were dealt with in the second procedure phase. Here, both the Federal Cartel Prosecutor and the FCA filed an application for review.

42 cases were notified to the FCA under the new transaction value threshold pursuant to § 9 (4) of the Austrian Cartel Act.

EU mergers

In 2021, a total of 452 mergers notified to the European Commission due to their EU-wide significance and then brought to the attention of the Member States in accordance with the relevant EU law were also examined for possible negative effects on Austria.

1105 mergers examined

A total of 1105 mergers were thus examined by the FCA. Each FCA case handler thus dealt with an average of around 36 mergers in 2021.

4.1 Merger statistics

MERGER STATISTICS 2011 – 2021											
Registrations	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total applications for registration	281	307	299	322	366	420	439	481	495	425	653
Phase I											
Release due to expiry of deadline	226	251	246	276	328	386	409	451	467	382	628
Waiver of examination	43	45	39	38	29	28	23	27	21	27	15
Withdrawal of the application	3	6	4	5	3	3	4	2	6	15	8
Other	0	0	0	0	1	0	1	0	1	1	0
Case closure in Phase I	272	302	289	319	361	417	437	480	494	424	651
these are in % of the applications	96.7	98	96.7	99	98.6	99.3	99.5	99.8	99.8	99.8	99.7
Pending Phase I	0	0	0	0	0	0	0	0	0	0	0
Phase II											
Withdrawal of the application	2	0	2	0	1	1	1	0	0	0	0
Withdrawal of application for examination	4	4	1	2	0	0	0	1	1	1	0
Case closure without Cartel Court decision	6	4	3	2	0	0	1	1	1	1	0
Prohibition by Cartel Court	0	0	0	0	1	0	0	0	0	0	0
Non-prohibition without requirements	0	1	2	0	1	0	0	0	0	0	0
Non-prohibition with requirements	1	0	4	1	1	2	0	1	0	0	0
Other Cartel Court decision	2	0	1	0	1	0	0	0	0	0	0
Case closure with Cartel Court decision	3	1	7	1	4	2	0	0	0	0	0
Pending Phase II	1	0	0	0	0	0	1	0	0	0	2
Total Phase II cases	9	5	10	3	5	3	2	1	1	1	2
these are in % of the applications	3.3	2	3.3	1	1.4	0.7	0.5	0.2	0.2	0.2	0.3
Examination requests FCA	9	4	10	3	4	3	2	0	0	1	2
Examination requests Federal Cartel Prosecutor	4	3	8	3	5	2	2	1	1	1	2

4.2 Pre-notification talks

If there are any doubts about the need for registration, or if a merger is very complex or the market shares after the merger are going to be very high, a pre-registration meeting can be advised in many cases. It is in the interest of both the notifying parties and the FCA to conduct merger control proceedings as expeditiously and smoothly as possible. With the help of a discussion on the basis of a submitted draft application, important information can often be obtained to assess the competitive impact.

If it is possible at this early stage to delineate the competition issues and reach an agreement between the FCA and the notifying parties on effective remedies (restrictions or requirements), complex and costly proceedings before the Cartel Court can be avoided. In 2021, **18** pre-notification procedures were conducted. Of these, ten were notified as mergers to the FCA; of these, two entered Phase II, with one of these mergers being approved subject to requirements and one still under review.

4.3 Obligation to report mergers

In 2021, entrepreneurs and legal representatives were again supported by the FCA's legal department with questions on the subject of compulsory registration, with the relevant mailbox (POST-Anmeldepflicht@bwb.gv.at) continuing to prove its worth as a single point of contact.

In total, the FCA provided informal legal assessments on more than 50 enquiries. The substantive priority was on the areas of turnover calculation/attribution, control and control change, and domestic impact.

In addition, following an increasing number of enquiries in connection with the second domestic turnover threshold introduced by the KaWeRÄG 2021, in § 9 (1) 2 of the Austrian Cartel Act, a corresponding practice note was published on the FCA's website.

4.4 Merger Heise Medien GmbH & Co. KG / Rheinwerk Verlag GmbH

On 16 December 2020, acquisition of 100% of the shares in Rheinwerk Verlag GmbH by Heise Medien GmbH & Co. KG was registered. The merger concerns

publishing and in particular information literature in the field of IT/EDP and photography, as well as conference events.

Heise is a media company and publishes computer and technology magazines, electronic media, non-fiction books, etc., and it operates, among others, the news portal heise online and the price comparison platform geizhals.at. Heise also runs the publishing houses dPunkt and O'Reilly, which publish guides and reference books in the areas of IT and photography. Rheinwerk is a publishing house in the fields of guidebooks and reference books for IT and photography.

Concerns regarding market definition

The FCA and the Federal Cartel Prosecutor expressed concerns regarding the proposed market definition of the notifying parties, namely to include IT/EDP and photography information literature in the general market for entertainment and information literature. This market definition might be too wide, causing the market shares indicated not to reflect the actual competitive situation.

FCA conducted market survey

Due to the concerns and in order to better assess the competitive impact, the FCA conducted a market survey. Publishers as well as booksellers were asked about the current competitive situation in the publishing industry for IT/EDP and photography information literature.

The interviewed companies expressed selective competition problems and stated that strong to intense competition prevails in the market for IT and photography information literature. They also pointed to the strong negotiating position of booksellers. The category management that Rheinwerk operates for a bookseller in Germany was viewed critically. From the competitors' point of view, this would make access to the bookseller more difficult.

Agreed requirements

In order to eliminate the competition problems described, the merger applicants proposed requirements to the FCA and the Federal Cartel Prosecutor:

1. dpunkt.verlag GmbH and Rheinwerk Verlag GmbH undertake not to offer category management for the Austrian book trade in the field of photography/IT/EDP for five years.

2. Heise Medien GmbH & Co. KG, which publishes the magazine titles c't, c't Fotografie, Technology Review, Make and Mac&i, undertakes for a period of five years to mark all book reviews that deal with book titles published by dPunkt Verlag or Rheinwerk Verlag with a reference to the fact that the book titles are published by companies that also belong to the Heise Group.

The implementation prohibition (§ 17 (1) of the Austrian Cartel Act) ceased to apply with effect from 28 January 2021.

4.5 Merger Post 102 Beteiligungs GmbH with D2D – direct to document GmbH approved subject to conditions

At the end of October 2020, Post 102 Beteiligungs GmbH (Post 102), a 100% subsidiary of Österreichische Post AG (ÖPAG), notified the further acquisition of a 30% stake in D2D – direct to document GmbH (D2D) (Z-5062).

As various market issues could not be resolved within the Phase I deadline, Post 102 initially withdrew the merger and re-notified it in early January 2021 (Z-5188).

As a result of the merger, ÖPAG increases its shareholding to 100%, acquiring sole control of D2D. Until that moment, Raiffeisen Informatik GmbH & Co KG (Raiffeisen Informatik) still held a 30% stake and exerted joint control with ÖPAG. D2D provides output services, i.e. essentially printing, enveloping and data transfer services.

In-depth competitive analysis and market survey

In the merger proceedings, the effects of the change from joint to sole control had to be examined. In particular, the question arose as to whether ÖPAG, as the sole shareholder, would be given other strategic opportunities that had previously been limited by Raiffeisen Informatik.

After interviewing market participants and obtaining information regarding the regulated universal service from RTR by the FCA, the parties commit to obligations (commitments) to overcome the remaining concerns. The conditions are primarily intended to guarantee that D2D continues to offer its services separately and without bundled discounts with services from the Post. The prices for the individual services are therefore to be shown separately, for example.

4.6 Merger Fujifilm/Hitachi

The proposed Z-5195 Fujifilm/Hitachi merger project was preceded by an agreement between Fujifilm and Hitachi and a public announcement on 18 December 2019. The subject matter of the agreement was a proposed acquisition of Hitachi's Diagnostic Imaging business ("Target Business") by Fujifilm. To this end, Hitachi has established a subsidiary called Fujifilm Healthcare Corporation ("Target Company"). The Target Company will acquire the Target Business by way of an absorption-type company split under Japanese law. Pursuant to the Share Purchase Agreement dated 18 December 2019 entered into between Fujifilm and Hitachi, Fujifilm shall thereafter acquire all of the shares in the Target Company from Hitachi (the "Merger").

The target business to be transferred from Hitachi to the Target Company includes large parts of Hitachi's business in imaging diagnostics, healthcare IT, support solutions for digital operations and equipment for cold therapy, but not the area for particle radiation and X-ray treatment systems.

The areas where the parties' activities overlap in Austria and/or the EEA concern computer tomography scanners (CT), external ultrasound equipment (UDE), and endoscopic ultrasound systems (EUS).

The merger project was then notified to the FCA for the first time on 20 May 2020 with the file number FCA/Z-4896, without any pre-notification talks having been held with the FCA in advance, as happened in other jurisdictions. Against the background of an ongoing review by the FCA and in all other jurisdictions in which the merger project was notified, the parties submitted an application for an extension of the deadline pursuant to § 11 (1a) of the Austrian Cartel Act on 12 June 2020.

As the merger project would have led to the presumption threshold for dominance under § 4 (2) 1 of the Austrian Cartel Act being exceeded in certain potential market definitions in the endoscopic ultrasound systems sector both in Austria and in the EEA, market dominance within the meaning of § 4 (2) 2 and 3 of the Austrian Cartel Act was present, and vertical concerns existed in particular with regard to the incentive to foreclose the markets for preliminary products in the supply of ultrasound equipment (ultrasound monitoring equipment or "UME"), on 1 July 2020 the official parties requested an in-depth examination of the merger project by the Cartel Court.

On 10 July 2020, the parties decided to withdraw the application in Austria in order to await further developments in the most important jurisdictions (in particular Japan) and to comply with the preference expressed by the FCA (and the German Federal Cartel Office “BKartA”) for a graded approach. The merger project was then re-notified in Austria on 11 January 2021.

The merger raised horizontal and vertical concerns. The presumption thresholds were exceeded at the national and EEA levels for the merged company. On a vertical level, the main problem was that FUJIFILM is the only supplier of endoscopic ultrasound systems that produces both ultrasound endoscopes and ultrasound monitoring equipment (in this case box-type ultrasound monitoring equipment). The vertical concerns were subsequently in the focus.

After the parties agreed to proposed remedies and implemented them by signing commitments, the FCA considered the concerns raised to be addressed, and the merger was approved subject to requirements on 9 February 2021. The commitments are mainly cooperation agreements and long-term supply agreements with companies at downstream market levels.

4.7 FUNKE Gruppe/WAZ Holding/Krone: Supreme Court of Austria ruled hypothetical merger registrations inadmissible

On 30 December 2019, FUNKE Österreich Holding GmbH and WAZ Ausland Holding GmbH (“Notifying Parties”) registered the change from joint control to sole control of KRONE-Verlag Gesellschaft m.b.H., KRONE – Verlag Gesellschaft m.b.H. & Co. Vermögensverwaltung KG., KRONE – Verlag Gesellschaft m.b.H. & Co. KG. and Krone Media Aktiv Gesellschaft m.b.H. through WAZ Ausland Holding GmbH, to the FCA as a merger.

In the course of the examination of the merger, complex questions of corporate law arose, in particular in connection with the articles of association submitted, which led to considerable concerns regarding the registrability of the notified transaction. Due to these concerns, the FCA and the Federal Cartel Prosecutor as official parties filed applications in January 2020 to reject their examination requests for lack of registrability of the notified transaction and in eventuality for examination of the merger. At the time of the filing, major issues of corporate law were in dispute between the companies and were

the subject of (arbitration) court proceedings. Thus, according to the official parties, there was no clarity about the exact structures of the merger. As it is not possible for the official parties to reject an inadmissible merger registration due to the lack of a legal basis, they applied for the rejection of their respective application for examination before the Cartel Court, whereby such rejection of the application for examination also includes the rejection of the registration. The Cartel Court dismissed the applications of the official parties FCA and Federal Cartel Prosecutor for examination of the merger as requested by them for lack of registrability of the notified transaction. The Notifying Parties appealed against this decision and requested that the decision of the Cartel Court be amended to the effect that the merger applied for was not prohibited, or that it be annulled altogether.

In its decision of 25 January 2021, the Supreme Cartel Court (OGH) as the highest cartel court did not uphold the Notifying Parties' appeal and confirmed the contested decision of the Cartel Court.

The Supreme Court justified its decision by stating that merger control serves to maintain and promote competitively structured markets as far as possible. The objective is not to protect individual competitors. A merger comes about only when there is a possibility of economic influence. In this sense, registration is not possible before there is fundamental agreement on the exact structures of the merger and a timetable for implementation. Contingent applications should not be considered in the merger review, as competition authorities should not deal with hypothetical scenarios.

In the case in question, the core issue was whether a change in the voting rights of the companies concerned and thus a change of control had occurred as a result of the acquisition of shares by way of inheritance. Whether an acquisition transaction within the meaning of § 7 (1) of the Austrian Cartel Act exists depends on the assessment of fundamental questions of company law. However, the Cartel Court shall merely examine whether undisputed structures of the alleged merger exist that lead to the need for registration; in contrast, it does not have to rule on disputed corporate law issues preceding this issue.

Since in the case in question there is no fundamental agreement on the exact structures of the alleged merger, but on the contrary the shift of the rights of influence between the shareholder groups (which forms the basis of the registration) is hotly disputed, according to the Supreme Court the notified transaction overall lacks registrability. In summary, it is not the task of merger control to decide on the effectiveness and validity of future acquisition trans-

actions. If a registration is therefore to be classified as “hypothetical”, it is inadmissible. This is because, as mentioned above, in the context of merger control, the acquisition transactions are assessed purely from a competition law perspective.

4.8 Lifting of requirements for Axel Springer / Funke by the Cartel Court

In its decision of 14 April 2021 on 27 Kt 5/20t, 27 Kt 6/20i-14, the Cartel Court annulled requirements imposed on the notifying parties by the Cartel Court in connection with the clearance of the merger FUNKE MEDIENGRUPPE GmbH & Co. KGaA / Axel Springer AG in 2014 were imposed by the Cartel Court (decision of 16 April 2014 at 27 Kt 164, 165/13, 29 Kt 1, 2/14). The decision is final and published in the edict file.

Funke and Axel Springer applied to the Cartel Court in December 2020 for the requirements to be lifted due to a change in the relevant circumstances. The requirements of 2014 had been mainly motivated by Funke’s indirect participation in Verlagsgruppe News GmbH and Top Media Verlagsservice (both “VGN”) via Kurier Magazine GmbH. Funke is also a major publisher of general-interest magazines in Germany, which are also exported to Austria, and was strengthened by the merger project in the marketing of advertisements in these general-interest magazines. The requirements were intended to ensure that Funke could not use the VGN participation to strengthen VGN’s dominant position in the general-interest magazine sector. To this end, information and influence possibilities of Funke in VGN were cut, and restrictions on advertising cooperation were imposed to prevent negative effects on competition in Austria.

The Cartel Court may lift requirements pursuant to § 12 (3) of the Austrian Cartel Act at the request of the obligated companies if and when the circumstances that were decisive for the imposition of the requirements change. In the case at hand, the relevant change in circumstances pursuant to § 12 (3) of the Austrian Cartel Act resulted from Funke’s withdrawal from the indirect shareholding in VGN. In addition, the involved parties Funke and Axel Springer have abandoned the marketing cooperation via ASMI and transferred Funke’s stake in ASMI back to Axel Springer. These circumstances paved the way for the lifting of the requirements by the Cartel Court.

4.9 Merger between Recticel and FoamPartner approved subject to requirements

From December 2020 to March 2021, the FCA examined the acquisition of sole control of Recticel to FoamPartner; the proceedings were concluded on the basis of a commitment pursuant to § 17(2) 2 of the Austrian Cartel Act (cf. <https://www.bwb.gv.at/news/detail/zusammenschluss-recticel-und-foam-partner-mit-auflagen-freigegeben>).

Recticel and Foampartner are both active in the production and distribution of foams – predominantly – in polyurethane (PU) for two final uses (technical and comfort applications). The concerns related to the production and marketing of engineering foams. Engineering foams are used in a wide range of products with simple (scouring pads, paint rollers etc.) as well as in complex applications such as in brake boosters, exhaust filters (automotive applications), air conditioning systems and ceramic filters (non-automotive applications). Technical foams often need to have special properties such as low emissions, increased flame resistance, a special degree of hardness, tear resistance or insulating qualities for noise/heat, etc.

The FCA considered concerns about customer dependence on sourcing engineered foams manufactured by Recticel/Foampartner. Due to the lack of readily available supply alternatives, parts of the Austrian customers feared substantial leeway for price increases from Recticel/Foampartner and market foreclosure as a result of the merger.

The notifying parties have proposed commitments to the official parties which were subjected to a market test. With the commitments, the notifying parties guaranteed continuation of the existing supply relationships in Austria for a period of three years from implementation, and largely excluded the possibility for price increases and deterioration of conditions. This eliminated the concerns from the FCA's point of view.

4.10 Modification of the requirements in the Transgourmet/Gastro Profi merger

Transgourmet Österreich GmbH ("Transgourmet") notified acquisition of sole control of Gastro Profi GmbH ("Gastro Profi") on 12 April 2019 (FCA/Z-4391). Both companies are active in the food wholesale business. Due to competition concerns raised by the FCA and the Federal Cartel Prosecutor in connection

with possible horizontal predatory pricing, the companies involved offered to impose requirements for a period of three years in 2019. In the view of the FCA and the Federal Cartel Prosecutor, these were suitable for overcoming the competition concerns. The requirements oblige the companies:

- to continue operation of the Alkoven site,
- to maintain a separate market presence and distribution of Transgourmet and Gastro Profi, including separate pricing and promotion policies,
- and not to distribute any of Transgourmet's own brands via Gastro Profi.

Upon request of Transgourmet, the FCA and the Federal Cartel Prosecutor agreed on 6 May 2021 to an amendment of the requirements imposed in the context of the merger proceedings.

The change in conditions should make it possible for Gastro Profi to distribute a small number of Transgourmet's own brands in the future in order to save on logistics costs. The distribution of own brands is limited to a total annual sales volume of no more than € 150,000. The amendment of the requirements was made against the background of significantly changed economic circumstances.

4.11 eBay Inc. / Adevinata ASA / eBay Classifieds Group

Adevinta ASA acquired the global online classifieds business of eBay Inc (eBay Classifieds Group, "eCG"). In return, eBay acquired a non-controlling minority stake in Adevinata. The minority interest comprises 44% of the financial shares and 33% of the voting shares.

- eBay operates the online marketplace www.ebay.at for the Austrian market, as well as the site www.ebay.de, which is also regularly visited by Austrian users.
- Adevinata holds a 50% stake in and exercises joint control over the Austrian online classifieds portal www.willhaben.at.
- Until 2 June 2021, Adevinata was also represented on the Austrian market by the online classifieds portal www.shpock.at (operated by Finderly GmbH; "Shpock").
- eCG includes, among others, the online classifieds portal www.ebay-kleinanzeigen.de.

In the course of the review of the merger under competition law by the FCA, data and internal documents of the companies involved were examined, and a large number of users of the Austrian online platforms concerned as well as numerous competitors of the merging parties were interviewed by the FCA. It was found

- that eBay and Willhaben in particular are in close competition for Austrian users, especially in the area of online sales by private individuals to other private individuals (consumer-to-consumer transactions; “C2C transactions”), and
- that the merger project affects an already concentrated market with few alternatives for users to meet the same needs,
- Hence there was a risk of non-coordinated effects on prices, quality and innovation to the detriment of Austrian users as a result of the transaction.

In view of the competition concerns raised by the FCA, the parties signed commitments suitable to prevent impairments of competition to the detriment of Austrian users.

The commitments require the parties to reduce eBay’s economic interest in Adevinta to 33% or less within 18 months, thereby reducing eBay’s effective interest in Willhaben to 16.5% or less. This limits incentives for reduced price, quality and innovation competition after performance of the transaction, and counteracts the non-coordinated effects of the transaction.

Furthermore, the commitments limit eBay’s ability to influence Willhaben and thus prevent eBay from influencing Adevinta’s market behaviour (in particular that of Willhaben) to the detriment of Austrian users.

A case report on this has been published on the FCA’s website:

https://www.bwb.gv.at/fileadmin/user_upload/PDFs/Fallbericht_eBay_Inc._Adevinta_ASA_12.07.2021_de.pdf

The text of the commitments can be found at:

https://www.bwb.gv.at/fileadmin/user_upload/Downloads/Zusammenschlusse/Adevinta_eBay.pdf

In this context, reference may be made to the recommendation of the Competition Commission to treat the topics of online trade and platforms with priority.

4.12 Metro/AGM merger submitted to Cartel Court for review following market survey by FCA

On 2 September 2021, the FCA received a notification of a merger (Z-5650) pursuant to which METRO Cash & Carry Österreich GmbH (“Metro”), in agreement with REWE Group, intends to acquire sole control over C & C Abholgroßmärkte Gesellschaft m.b.H. (“AGM”), affecting nine AGM wholesale markets across Austria.

The starting point for examination of the merger was the [FCA's position on Food Wholesalers](#) published in 2011 and based on decision Z-1387 (Pfeiffer/Nussbaumer): Accordingly, the market is divided into the segments of “pick-up wholesale” (small customers) and “delivery wholesale (large customers)”. Spatially, patches are delineated around the respective location, covering 30 km (road kilometres) for collection wholesalers and 100 km (road kilometres) for delivery wholesalers. The notifying parties submitted a product and geographic market definition that was fundamentally different in every respect.

In order to better represent the market, the FCA conducted an extensive market survey. An innovative online market survey and evaluation tool was used, which enabled a large number of customers and competitors to be surveyed at the same time. Ten full-range competitors of Metro and AGM were surveyed, as well as around 1,200 customers, of which over 400 customers responded in full. In the market investigation and analysis, the FCA found no convincing reasons to depart from the position.

If the FCA's position is followed, the presumption of market dominance is fulfilled for all AGM locations with significant increases. Even if one were to assume that delivery and collection wholesalers form a common market, there would be five AGM sites with competitive concerns. Due to the high concentration in the Austrian food markets, there are also supra-regional concerns due to future gradual external market share increases (“salami tactics”) and the possible loss of regional diversity in the product range and local value creation through global purchasing strategies.

The critical feedback and competition concerns were sent to the notifying parties for comment. The notifying parties have not offered any measures to address the existing concerns of the FCA or the Federal Cartel Prosecutor. The FCA and the Federal Cartel Prosecutor have therefore each submitted an application for review to the Cartel Court (phase II) on 30 September 2021.

4.13 Facebook, Inc. / Giphy, Inc.

Facebook finally notified the FCA of its acquisition of Giphy retrospectively on 20 July 2021. In the course of the competition impact assessment, the FCA sought extensive information and received feedback from a wide range of market participants, including Giphy's customers (API partners) or Facebook's competitors in social media and online advertising, Giphy's competitors in searchable GIF libraries, and Facebook's customers for online advertising. In addition, a large number of internal documents were provided by the merger applicants, including numerous documents created during the preparation for the transaction.

The concerns under competition law investigated by the FCA were substantiated, necessitating an in-depth investigation at the Cartel Court. In the FCA's view, this raises in particular the question of whether Facebook's acquisition of Giphy strengthens a dominant position in social media and online advertising. The FCA was concerned, based on its investigation, that Facebook might

- restrict non-discriminatory access to Giphy for competing social media,
- obtain competitively sensitive information about competing online platforms through the interface to the GIPHY library integrated into numerous apps, and
- nip Giphy's potential competition for online advertisers in the bud.

The FCA referred the merger 17 August 2021 to the Cartel Court for an in-depth investigation due to competition concerns (Phase II). The Cartel Court has approved the merger subject to requirements. On 03 March 2022, the FCA appealed against this decision to the Supreme Court as the highest cartel court. The proceedings were still pending at the time of going to press. This will be discussed in more detail in the 2022 Activity Report.

4.14 Prohibited implementations or incorrect / misleading information

Facebook, Inc. / Giphy, Inc.

Facebook, Inc. (company name meanwhile changed to Meta Platforms, Inc.) completed direct acquisition of sole control of Giphy, Inc. on 15 May 2020; this merger was not notified in Austria. The investigations initiated by the FCA resulted in an application by the FCA to the Cartel Court for the imposition of a fine on suspicion of a breach of the implementation ban. On 22 July 2021, the Cartel Court imposed the fine of € 9.6 million requested by the FCA on the basis of a settlement with Facebook against Facebook for the prohibited implementation of the merger with Giphy.

Facebook operates services via its eponymous website and smartphone applications, particularly in the area of social networking (Facebook, Instagram) and instant messaging services (WhatsApp, Messenger). Facebook's services are free of charge for non-commercial users. Monetisation is mainly through (personalised) advertising.

The US company Giphy is a digital platform that operates a library and search engine especially for GIFs and stickers (collectively "GIFs"). GIFs are a graphic format that can be used to create animations and short video sequences. GIFs are mainly used for visual communication. GIFs from Giphy are often integrated into third-party services (such as WhatsApp or Instagram) via a programming interface. So far, this has been done free of charge for the third-party providers.

The FCA's investigations had revealed that Facebook's acquisition of Giphy should have been notified in Austria, as it met the criteria of the transaction value threshold (§ 9 (4) of the Austrian Cartel Act). This threshold was introduced in particular for mergers whose economic or competitive importance is not primarily reflected by the turnover of the companies involved, but is reflected in a high transaction value of at least € 200 million.

The FCA's examination focused primarily on the question of whether Giphy, as a company to be acquired, is active in the domestic market to a significant extent (§ 9 (4) 4 of the Austrian Cartel Act). The FCA concluded that, taking into account the particularities of the case, the focus should not only be on direct use via Giphy's own website and app, but also on users of other services, websites and third-party apps that integrate Giphy via programming interfaces (e.g. Facebook and other social media).

The Cartel Court followed the FCA's assertion and found (28 Kt 6/21y) that in view of the (direct and indirect) use by Austrian customers, Giphy's domestic activity was to be acknowledged, as well as that this use was also significant. The significance of this is already evident from the fact that Giphy has at least 0.5–1 million monthly active users in Austria. The decision is final.

In this context, reference may be made to the recommendation of the Competition Commission to deal with the topic of platforms as a priority.

Salesforce, Inc. / Tableau Software, Inc.

Upon request of the FCA, the Cartel Court imposed a fine of € 100,000 on the company Salesforce.com, Inc ("Salesforce"), by decision of 22 April 2021 (27 Kt 9/21g), for the prohibited implementation of the Salesforce / Tableau Software merger for the period from 1 August 2019 to 22 October 2020. Salesforce subsequently notified the FCA on 24 September 2020 of its acquisition of all shares in Tableau Software and its resulting acquisition of sole control. The merger was approved on 23 October 2020.

The prohibited implementation in question is the first case of a violation of the transaction value threshold pursuant to § 9 (4) of the Austrian Cartel Act. On the basis of the Cartel Court's statements in the published decision, it appears that in the future, at least with a share of more than 10% in a competitively relevant segment, a significant domestic activity pursuant to § 9 (4) 4 of the Austrian Cartel Act is to be assumed.

Salesforce acknowledged the facts presented by the FCA. Furthermore, in assessing the fine, the FCA took into account not only the duration but also the degree of culpability (including the fact that the transaction value threshold is a relatively new provision), voluntary cooperation and the absence of any ascertainable enrichment. The decision is final.

OneMed Holding AB

Upon request of the Federal Competition Authority (FCA), on 4 June 2021 the Cartel Court imposed a fine of € 30,000 (24 Kt 6/21v) on the company OneMed Holding AB, Sweden, for the prohibited implementation of the concentration notified on 11 January 2021 concerning the acquisition of 60% of the shares

in SMEDICO AG, Switzerland, and sole control of SMEDICO AG, which took place on 16 December 2020. The merger was approved on 09 February 2021.

The company OneMed Holding AB did not dispute the relevant facts. The decision is legally binding. The industry sector concerns medical products.

SMS group GmbH

On 15 July 2021 (25 Kt 6/21a), upon request of the Federal Competition Authority, the Cartel Court imposed a fine of € 30,000 on the company SMS group GmbH, Germany ("SMS group"), for the prohibited implementation of the merger notified on 22 December 2020 (FCA/Z-5167) concerning the acquisitions of sole control over OMAV S.p.A., Italy ("OMAV") and Hydromec S.r.l., Italy ("Hydromec"). The merger was approved on 20 January 2021.

SMS group is a company active in plant and mechanical engineering for the metallurgical and rolling technology sectors. It is headquartered in Düsseldorf and has locations in Austria. OMAV, based in Brescia (Italy), is active in the field of mechanical metal plant engineering and mainly manufactures runners and heating systems for extrusion lines. Hydromec, also based in Brescia (Italy), operates in the field of mechanical metal plant engineering and manufactures various products in the hot pressing and forging sectors. SMS group acquired all remaining shares in OMAV, in addition to the 25% it had already acquired in 2017. Implementation of this acquisition took place on 24 September 2020. OMAV acquired 70% of the shares in Hydromec on 30 September 2020.

From a legal point of view, the acquisition constituted a merger under § 7 of the Austrian Cartel Act, which would have had to be notified because the turnover thresholds were exceeded.

In determining the amount of the fine, the Cartel Court considered the self-disclosure, the lack of negative effects and lack of competitive concerns about the merger, the lack of enrichment of the defendant, the duration of the infringement of only three months and twenty-eight days and the acknowledgement that helped to clarify the infringement as mitigating factors. An aggravating factor was the fact that SMS group is a company with cross-border activities, which as a matter of principle can be expected to have sufficient knowledge of merger control law.

Naxicap Partners SA

Upon request of the Federal Competition Authority (FCA), the Cartel Court (25 Kt 7/21y) imposed a fine of € 83,000 on the company Naxicap Partners, SA, France, on 17 November 2021 for the indirect acquisition of 7.47% of and sole control over Ondura Holding SAS and 19.13% of and sole control over Fiduline SAS, France, by Naxicap Partners, SA, France, which was notified to the FCA on 8 June 2021 under FCA/Z-5451 but already completed on 16 March 2021. The seller of both participations was Ondufin SAS.

The industry sector affected by the merger is the manufacture of waterproofing and roofing products. No concerns under competition law were raised against the merger during the ex-post review.

Naxicap Partners SA did not dispute the facts relevant to the decision. The respondent and the official parties waived their right to appeal, hence the decision became final on 17 November 2021.

Ondufin SAS; alwitra GmbH

On 17 December 2021 (27 Kt 13/21w), the Cartel Court imposed a fine of € 64,000 on the company Ondufin SAS, France, for the acquisition of 7.47% of and joint control over alwitra Holding (France) SAS, which was notified to the FCA on 7 October 2020 under FCA/Z-5046 and released on 6 November 2020 due to the expiry of the deadline, but which had already been completed on 8 July 2020.

As a result, the Cartel Court followed the FCA's request. The Federal Cartel Prosecutor agreed with the FCA's request.

The shareholding structure and the attributable turnover of the target company were discussed. The acquisition of direct influence pursuant to § 7 (1) 5 of the Austrian Cartel Act was realised by concluding a new partnership agreement and new articles of association, which provide for the unanimous approval of all shareholders for essential decisions (approval of the annual budget, investments, management).

The industry sector affected by the merger is the manufacture of roofing products. There were no concerns under competition law against the merger. Ondufin SAS did not dispute the facts relevant to the decision. The respondent

and the official parties entered a waiver of appeal. The decision is therefore legally binding.

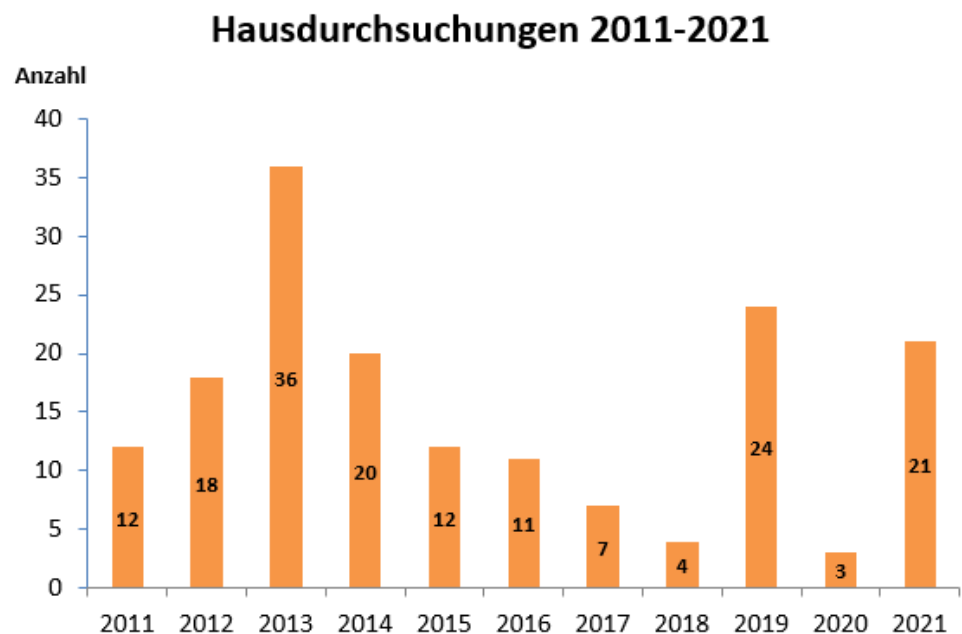
.

5 Cartels, concerted practices and investigations

5.1 House searches

In 2021, a total of 21 house searches took place. The investigation focused in particular on the suspicion of horizontal agreements in the area of waste management that violated cartel law.

House searches 2011–2021



5.2 Whistleblowing system

On 8 February 2018, the FCA launched its whistleblowing system. With this system, accessible via the FCA's website, it is now possible for anyone to contact the FCA anonymously and report suspected or proven anti-trust law violations and other violations that fall within the FCA's area of responsibility, without having to be named. An essential feature of the system used is that it enables the FCA to contact the whistleblower, who remains anonymous, and obtain further information through a kind of letterbox system.

A total of 39 reports were submitted in 2018 and 45 in 2019. This number increased to 59 in 2020. In 2021, a total of 78 reports were submitted. These break down as follows:

- **27 notifications** with suspected violations of the Cartel Act, which are still in an intensive examination phase;
- **47 reports** that were terminated after verification without further action;
- **7 reports** where investigations were initiated under the Austrian Act against Unfair Competition (UWG);
- **2 reports** were forwarded to the respective competent authority, Economic and Corruption Prosecutor's Office (WKStA) or the locally competent financial police, after they had been checked;
- **3 reports** without recognisable content that are not answered either (so-called joke mails).

5.3 Leniency programme

The FCA may refrain from requesting the imposition of a fine or apply for a reduced fine for entrepreneurs or associations of entrepreneurs which, through their cooperation, help to uncover an infringement of § 1 of the Austrian Cartel Act or Article 101 of the TFEU. Thus, the leniency programme of § 11b of the Austrian Competition Act is an essential instrument for enforcement of the prohibition of cartels.

Eight requests to proceed under this regulation were submitted to the FCA in 2021, bringing the number of requests in line with the multi-year average. These were exclusively national cases. This means that there were no so-called summary applications to the FCA after a leniency application had already been submitted to the European Commission.

Directive 2019/1/EU on the strengthening of national competition authorities, which now obliges member states to introduce leniency programmes and was implemented in Austria with the Cartel and Competition Law Amendment Act (KaWeRÄG) 2021, did not bring about any material changes. The substantive requirements for leniency applications, which were previously found in the FCA's leniency handbook, are now regulated in an ordinance of the BMDW. The FCA provides details in relation to applying for a reduced fine in a separate document published on its website.

Minor changes were made to § 209b of the Austrian Code of Criminal Procedure (StPO), which regulates the waiving of penal prosecution of employees of a company that has made a significant contribution to the FCA, the European Commission or the competition authority of another member state in order

to clarify an infringement under anti-trust law. The focus of the regulation is now more on the contribution of the company to the clarification of an infringement and the active participation of the individual employees in this. Moreover, it defines incentives to encourage employees to disclose their knowledge as early as possible.

5.4 Ongoing investigations in the construction industry and first proceedings legally concluded with fine of € 45.37 million

Since 2017, the FCA has been investigating in cooperation with the Public Prosecutor's Office for Economic Affairs and Corruption and the Federal Anti-Corruption Office on suspicion of a nationwide infringement of the prohibition of cartels (§ 1 of the Austrian Cartel Act and Art 101 of the TFEU) in the construction industry going on for several years.

The alleged cartel included price fixing, market allocation, exchange of competition-sensitive information as well as working/bidding consortia in violation of cartel law in connection with tenders in the building and civil engineering sector. First and foremost, tenders (under the Federal Public Procurement Act) by public contracting authorities such as the federal government, the states, municipalities and public enterprises were affected. However, tenders in the private sector were also included in the alleged cartel. Currently, a total of over 40 construction companies are suspected of having been involved in the infringement. They are alleged to have split orders among themselves for several decades and to have coordinated their bid prices in order to secure market shares, among other things.

Following initial applications for fines in October 2020 and April 2021, the FCA submitted a further application for a fine of € 45.37 million against two companies of the STRABAG Group ("STRABAG") on 14 July 2021.

By decision of 21 October 2021 (27 Kt 12/21y), the fine requested by the FCA was imposed on STRABAG for infringement of § 1 (1) of the Austrian Cartel Act and Article 101 (1) of the TFEU, namely for uniform and continuous infringement by price fixing, market allocation and prohibited exchange of information with competitors in relation to public and private tenders in the field of building construction and civil engineering in Austria in the period from July 2002 to October 2017. This was the highest cartel fine imposed on a company or group of companies up to that date. The decision is final.

STRABAG cooperated continuously and extensively under the leniency programme. In addition, STRABAG introduced a certified compliance system in conjunction with a new type of monitoring system to prevent future infringements of the prohibition of cartels. In the context of its cooperation with the FCA, and with the involvement of the Federal Cartel Prosecutor, STRABAG had also issued an acknowledgement for the cartel court proceedings. Against this background, the FCA had applied for a reduced fine.

The PORR Group ("Porr") likewise issued an acknowledgement at the end of September 2021 in the course of settlement talks with the FCA and the Federal Cartel Prosecutor. In this letter, Porr concedes its participation in the infringement and accepts a fine of € 62.35 million as appropriate. The application for a fine against Porr filed in April 2021 was supplemented at the Cartel Court in the sense of the acknowledgement. The decision is final.

The proceedings before the Cartel Court, which are based on the fine application from October 2020, are still pending. In addition, further statements of the allegations were sent to affected companies in autumn 2021.

In this context, reference may be made to the recommendation of the Competition Commission to deal with the topic of bid-rigging as a priority.

5.5 Investigations in waste management

From Tuesday 16 March to Monday 22 March 2021, the FCA simultaneously carried out house searches at over 20 sites in the waste management sector. The investigation was assisted by the Federal Criminal Police Office and the state criminal police offices, and a total of more than 100 people were deployed.

Companies in the federal states of Lower Austria, Carinthia, Upper Austria, Salzburg, Styria and Vienna were affected.

The house searches were based on the suspicion that several companies in the waste management sector had violated law regulations under anti-trust law over a longer period of time. The suspicions include price fixing, market allocation, and collusion in tenders. The focus of the investigations is on waste logistics, more precisely the collection and transport of waste.

The Austrian Waste Management Act (AWG 2002) is the most important legal basis for this sector, in addition to European legal requirements, and regulates waste prevention, recycling, other recovery (e.g. energy recovery) and the disposal of waste. In addition, state laws for waste management are in force in all federal states, regulating the municipal collection of waste, the collection of waste fees and the planning of facilities.

Waste management is divided into waste collection, waste treatment and disposal, and recovery. Furthermore, a distinction can be made between municipal waste and commercial waste, with further segmentation.

About 300 companies are active in the waste management industry in Austria. In addition to some supra-regional market participants, many smaller companies are active in the regional area.

Waste generation in Austria was approximately 66.5 million tonnes in 2018, with an increasing trend compared to previous years. The industry achieved a total turnover of € 5.16 billion in 2018. Of these, the six largest companies have a combined turnover of about € 2 billion.

Investigations are currently under way, with the focus on evaluation of the data seized during the house searches. The first applications to the Cartel Court are expected to be filed in the course of 2022.

In this context, reference may be made to the recommendation of the Competition Commission to deal with the topic of bid-rigging as a priority.

5.6 Imposition of a fine on Fond Of GmbH for vertical price maintenance in the distribution of school bags

At the request of the Federal Competition Authority, the Cartel Court imposed a fine of € 340,000 on the Cologne-based company Fond Of GmbH by decision of 15 July 2021 (25 Kt 5/21d). In the period from 1 January 2012 to 31 January 2019, the company entered into agreements with retailers on the Austrian market on fixed and minimum sales prices for school bags or backpacks of the brands “satch” and “ergobag” and in individual cases for accessories for these products, as well as for backpacks and accessories of four other brands. In addition, traders were banned from selling online in this context in the period from January 2012 to August 2016.

Agreements defining fixed or minimum price levels or fixed or minimum selling prices are so-called core restrictions, which reduce or even eliminate intra-brand price competition.

The company cooperated with the FCA under the leniency programme and therefore applied for a reduced fine.

In 2019 and 2020, the FCA had investigated suspected vertical price fixing in the distribution of school bags and backpacks respectively, following consumer complaints, and had also conducted house searches in this context. Fond Of GmbH filed a leniency application during the very house search and subsequently cooperated extensively with the FCA in order to fully clarify the facts of the case. This also made it possible to investigate Austrian traders, one of whom also cooperated with the FCA under the leniency programme. The proceedings against these companies are still ongoing.

5.7 Market power abuse proceedings

Merck Sharp & Dohme GmbH – Commitments in order to end abuse proceedings in the distribution of drugs containing the active substance temozolomide

In May 2020, the FCA filed an application with the Cartel Court for declaration of an abuse of a dominant market position through dumping prices in the distribution of the drug Temodal® against Merck Sharp & Dohme GmbH, headquartered in Vienna. To address the concerns of abuse of dominance, the company has offered commitments in March 2021 before the Cartel Court. In the FCA's view, the commitments are suitable to address the concerns under anti-trust law. Glioblastoma is the most common brain tumour in adults. Every year, approximately 350 new cases are detected in Austria. Drugs containing the active substance temozolomide are part of the standard therapy in the treatment of this particularly malignant brain tumour.

The FCA carried out an in-depth market investigation in the course of the investigations

In the context of the market investigation, the market for the oncological drug with the active ingredient temozolomide was examined in depth, and the allegation of predatory pricing on the part of the company was analysed in more detail.

The investigations have yielded the following results:

- **Affected market:** The market for the active substance temozolomide in the hospital sector (intramural sector) is affected;
- **Market power:** The company has a dominant position due to a share of over 85% for the active substance temozolomide in the market concerned;
- **Predatory pricing:** The company pursued a predatory pricing strategy that made it difficult for generics to enter the market;
- **Negative effects:** The alleged predatory pricing strategy leads us to expect higher costs for the health system in the long term, as well as less security of supply in the market concerned.

Method of predatory pricing – market entry made difficult

The company's predatory pricing ensured that hospitals would have no incentive to switch to generic versions of the drug, which would prevent successful market entries by generic manufacturers. According to the FCA, Merck Sharp & Dohme GmbH accepted losses by placing the drug below cost in the hospital sector in order to force other competitors out of the market. The follow-up prescription after hospital discharge took place in the private-practice sector, whereby the prescription drug is purchased in the pharmacy, thereby compensating for the losses incurred. Within the framework of a strategy to foreclose generic manufacturers in the distribution of the drug Temodal® to hospitals after the expiry of patent protection, price undercutting was allegedly carried out, prices were set below cost and free copies were made available. At times, some hospitals received only free samples for initiation of treatment. Due to the company's predatory pricing, hospitals had no incentives to switch to cheaper generics of the drug, which prevented successful market entries by generic producers during the period of the alleged infringement.

Negative effects: Increased costs for the health system and reduced security of supply

Hospitals did benefit directly through lower costs for the initial prescription of the drug. However, in the medium term, price disadvantages are to be expected due to higher costs for the health care system in the case of continued prescription in the general practice sector. In the overall picture, this will in turn lead to higher costs for the health system. Another aspect is the security

of supply, which is better ensured if there are several suppliers of medicines. The commitments are intended to counteract these negative effects.

Merck Sharp & Dohme GmbH agreed on commitments

The company agreed the following commitments with the FCA before the Cartel Court:

- 3. Cessation of the predatory pricing strategy:** The company undertakes not to sell Temodal® products below the average variable costs for hospitals (intramural area) (related to the respective offer or order).
- 4. Transmission of the cost calculation to the FCA:** The company is obliged to submit a calculation of the average variable costs to the FCA in confidence within 2 months of these commitments coming into force.
- 5. Commitment to compliance with all regulations under anti-trust law:** The company is expressly committed to fair competition as well as to compliance with all applicable national and international regulations under anti-trust law, in particular with regard to the abuse of a dominant market position, which is rejected and not tolerated in any way. This includes, in particular, the proactive ousting of new competitors entering the market.
- 6. Compliance measures:** For prevention of violations, the company will integrate an internal control system and conduct regular mandatory compliance training for employees.
- 7. At least 10 years in force:** The commitments made in 1, 3 and 4 shall in any event apply for a period of 10 years and continue to apply thereafter if the company holds a dominant position on the market for the distribution of temozolomide products to hospitals in Austria or on the market for the distribution of temozolomide products to private practices in Austria.

If the company should breach any of the commitments, the FCA can apply to the Cartel Court for a fine.

The commitments are suitable to overcome the concerns under anti-trust law. The decision of the Cartel Court is final.

In this context, reference may be made to the recommendation of the Competition Commission to treat the health sector as a priority.

Büchl/Peugeot – Decision of the Supreme Court of Austria of 17 February 2021, 16 Ok 4/20d

With the cited decision, the Supreme Court, as the highest cartel court, confirmed violations of the prohibition of abuse of a dominant position in the area of the distribution of new cars as well as the operation of car repair shops.

In October 2018, the company Büchl GmbH (“Büchl”) had filed an application with the Cartel Court against the company Peugeot Austria Gesellschaft m.b.H. (“Peugeot”) for cessation of the abuse of a dominant position.

The parties to the proceedings have a contractual relationship with each other in the area of the sale of new cars and the operation of workshops, within the framework of which Büchl was granted the non-exclusive right by Peugeot to sell Peugeot passenger cars and light commercial vehicles up to 3.5 t and the associated equipment, to provide service and repair services for these Peugeot products, and to ensure after-sales service.

In the first-instance proceedings before the Cartel Court, the FCA had issued a statement of opinion on the existence of market dominance, in particular on the existing relative market power (§ 4 (3) of the Austrian Cartel Act as most recently amended) as well as on the potential abusiveness of the incriminated conduct.

Due to previous regular complaints from the motor vehicle sector, the FCA had previously published a position paper in 2016 on the assessment of such [facts](#). The aim was to provide an overview, in particular, of unlawful abuses of market power and to explain the applicable legal framework concerning recurring, problematic issues for companies operating in the motor vehicle sector.

In May 2020, the Cartel Court found that Peugeot had violated the prohibition of abuse of market power in several respects (see below in the context of the appeal decision), and ordered cessation of these practices. However, a further claim by the applicant concerning, among other things, inappropriate investments into corporate identity, disproportionately high prices for test and diagnostic equipment, as well as for access to technical documentation and training or the exertion of economic pressure to process as few warranty

cases as possible could not be proven and had therefore led to the rejection of the claims in this regard.

Peugeot had appealed against this decision of the Cartel Court to the Supreme Court as the highest cartel court, which appeal was now largely unsuccessful. Rather, in the present decision of the Supreme Cartel Court, the decision of the Cartel Court was confirmed almost in its entirety; only one partial aspect was referred back to the court of first instance in order to supplement the facts of the case.

With regard to the Cartel Court's finding of a restriction of pricing freedom through coercion to participate in the manufacturer's promotions, the Supreme Cartel Court considered the factual basis for the final assessment of abusiveness as insufficient and therefore annulled this point of the decision together with the referral back. This part of the proceedings is still pending in court.

The final part of the decision required Peugeot to put an end to the abuse of its dominant position in the following respects within three months.

In new car sales by cessation

- of the linking of premium payments to the existing and actually practised system of customer satisfaction surveys;
- of the margin reductions by setting deliberately excessive sales targets by increasing the target value to an extent exceeding the general estimate of the sales development despite a lowering of the sales targets for previous years in the contractually provided expert arbitration procedure;
- of the practice of abusively low sales prices on the retail market by dealerships in the economic majority ownership of the defendant, in particular when their losses are covered by the defendant, while at the same time the defendant charges prices to the applicant and grants discount conditions which make it impossible for the applicant to discontinue these low retail prices.

In workshop operation by cessation

- of the obligation to performance of guarantee and warranty work with conditions imposed by the defendant, in particular a control system which is also costly for the applicant, which make this work economically unviable for the applicant;
- of the handling of guarantee and warranty orders with hourly rates that do not cover costs, and refunds for spare parts that do not cover costs;

In new car sales and in the workshop area by cessation

- of the passing on of the costs for Mystery Shopping, Mystery Leads and standard criteria audits to the applicant, in particular through the imputed inclusion of these costs in the training flat rate.

From the decision of the Supreme Cartel Court, the following statements are to be emphasised in general, although with particular significance for the area of motor vehicle distribution:

Relative market power

Like the Cartel Court, the Supreme Cartel Court assumed that Peugeot had relative market power. The existence of alternative options at economically justifiable conditions is essential for this. It was not decisive in the case in point whether there was a single market or separate markets for new cars and services, since Büchl was economically dependent on maintaining the business relationship with Peugeot in both areas.

Abuse of conditions

With regard to the existence of an abuse of conditions, the Supreme Cartel Court followed its established case law, according to which such an abuse is deemed to exist in case of obviously unfair conditions or an obvious disproportion of the costs of the provision of services. In addition, the need to weigh up the interests, oriented towards the principle of proportionality, was emphasised. It is prohibited to pursue legitimate goals by unfair means and to interfere with the freedom of action of the contracting party to a greater extent than necessary. Excessive influence also exists if it is solely or predominantly in the unilateral interest of the dominant undertaking.

Portoservice et al (applicant) / Österreichische Post AG (respondent)

Market power abuse proceedings under §§ 5 et seq and 26 of the Austrian Cartel Act have been pending between the involved parties at the Cartel Court (27 Kt 8/19g, 27 Kt 10/21d) since June 2019. In its decision of 25 March 2021 on 27 Kt 10/21d, the Cartel Court dismissed applications for an interim injunction of February 2021; the decision is final. By partial decision of 22 July 2021 on 27 Kt 8/19g, the Cartel Court granted two applications by the applicants for cessation of abusive conduct by the respondent and dismissed the factual applications underlying the application for an interim injunction. The respondent Österreichische Post ("ÖPAG") filed an appeal against this decision. In its decision of 11 November 2021, the Supreme Cartel Court decided not to grant the appeal.

The FCA submitted several statements of opinion in the proceedings as well as a response to the appeal, clearly denying the compatibility of ÖPAG's rebate practice with European competition law.

The applicants Portoservice et al are so-called consolidators; they seek cessation of abusive discount practices and discrimination against the applicants by ÖPAG in the delivery, letter and info.mail markets. Consolidators provide mail preparation services (sorting, enveloping, advice, insertion in mail distribution centres, etc.) for bulk mailers (institutions, companies, non-profit organisations) who regularly send large quantities of letter mail and/or Info.Mail. But they are also customers of Post because they need to use end-to-end delivery via Post to access the market. The price of Post's end-to-end delivery service is a major cost factor for consolidators and limits their ability to market mail-preparation services to bulk mailers (sometimes in competition with Post). The activity of consolidators is regulated in Art 12, fifth bullet point of Postal Services Directive 97/67 to the effect that Post may not discriminate between consolidators and other large customers (i.e. bulk mailers) when marketing its own delivery services.

On the dismissal of the interim injunction applied for by the applicants (Cartel Court decision of 25 March 2021 at 27 Kt 10/21d): The underlying factual argument was re-filed only in the February 2021 application. The application for an interim injunction related to the market for parcel delivery services. The Cartel Court justified the dismissal of the application by pointing to the lack of market dominance of ÖPAG on this market and the lack of evidence of abuse of market power.

The partial decision of the Supreme Cartel Court on the main proceedings referred solely to the Info.Mail area. The Supreme Cartel Court stated there that ÖPAG, as a dominant company (and not only as a universal service provider), was obliged to apply non-discriminatory tariffs in its relations between different business partners. The ECJ's bpost ruling (C-340/13) cannot justify a general waiver of this equal-treatment obligation in the area of volume discounts. Due to the clear requirements of European law in this respect, the Supreme Cartel Court did not see any reason to request a preliminary ruling, especially since questions of factual subsumption were to be solved by the national courts.

In this context, the Supreme Cartel Court emphasises that when examining discrimination in the Info.Mail sector, differences in remuneration and conditions in ÖPAG's overall business relations with the applicants and large customers as well as their effect on competition must be taken into account. In the bpost proceedings, differences in charges were competition-neutral. In the case at hand, however, the Supreme Cartel Court stated that the considerable differences in fees from 2017 onwards had led to the market exit of an applicant and had thus by no means been neutral in terms of competition.

On the subject of confidentiality obligations, the Supreme Cartel Court confirms the legal opinion of the Cartel Court that the principle of transparency and non-discrimination according to Art 12, fourth and fifth bullet point, of the Postal Services Directive 97/67 already precludes the confidentiality of actually agreed tariffs. Specifically, however, the prohibition of discrimination, which is derived from the prohibition of abuse of market power, also precludes the secrecy of agreed tariffs. The examination of whether a trade secret exists needs to be carried out on a case-by-case basis. However, the Supreme Cartel Court emphasises that, according to unanimous case law (16 Ok 14/13, 16 Ok 9/14f, etc.), evidence of actually committed competition violations can never constitute business or trade secrets. Furthermore, according to the Supreme Cartel Court, the possibility at best given to the applicants to avert competition violations by means of target customer agreements cannot provide a remedy against competition violations, as the obligation of secrecy prevents their effective implementation.

AOC: More advertising possibilities for athletes with non-Olympic advertising sponsors

The Austrian Olympic Committee ("AOC"), with the support of the FCA, has published new guidelines for advertising with non-Olympic partners. The new guidelines are intended to simplify procedures and facilitate promotional opportunities for athletes. This was an adaptation to current international legal developments. Here the FCA contributed its expertise in anti-trust law.

The international developments referred to started from the German Federal Cartel Office, which in a decision (B 2-26/17, [B2-26-17.pdf \(bundeskartellamt.de\)](#)) considered the application of Rule 40 of the Olympic Charter (OC) on advertising opportunities for non-Olympic sponsors to be too restrictive and obliged the German Olympic Sports Confederation (DOSB) to amend its directives. The IOC, at the instigation of DG Competition, has also revised the directives on commercial possibilities of participants as defined in Rule 40 of the OC in 2019.

The new guidelines of the AOC now clarify for athletes of the Olympic Games the conditions under which advertising with non-Olympic partners is permitted, based on the revised guidelines of the IOC. Permissible advertising campaigns are such that are already on the market 90 days before the start of the Olympic period (so-called generic advertising).

The guidelines provide comprehensive information

- on advertising opportunities during the Olympic Games;
- on permissible social media messages (thank you/congratulatory messages);
- on procedural framework conditions.

6 Other proceedings and reports

6.1 Preliminary contract reviews pursuant to §§ 6 et seq of the Austrian Federal Broadcasting Act (ORF-G)

Since 2010, new ORF offerings have had to undergo a preliminary contract review pursuant to §§ 6 et seq of the Austrian Federal Broadcasting Act (ORF-G), in which KommAustria examines not only the contribution of these offerings to the fulfilment of the public service remit, but also their impact on competition and the diversity of offerings, and may attach conditions to the approval.

In these proceedings, the Federal Competition Authority represents the interests of competition as an official party. In this function, the FCA comments on the likely effects of the new offer on the competitive situation of other media companies operating in Austria and can subject KommAustria's decisions to review (§ 6a (4) and (5) of the ORF-G).

6.1.1 ORF preliminary contract review procedure “topos.ORF.at”

The preliminary contract review on “topos.ORF.at” has been pending since the 2020 reporting period and was already dealt with in the 2020 activity report, too. In its statement of opinion pursuant to § 6a (4) 2 of the ORF-G, the FCA had questioned the compatibility of the planned new online offering “topos.ORF.at” with ORF's online mission as formulated in §§ 4e and 4f and pointed to probable negative effects for comparable Austrian media offerings.

In its decision of 22 December 2021 (KOA 11.281/21-008), KommAustria approved the provision of the online service “topos.ORF.at” in accordance with the service concept submitted on 11 August 2020 pursuant to § 5a of the ORF-G, in accordance with § 6b (1) in conjunction with (2) and (3) of the ORF-G.

The FCA takes note of KommAustria's decision and states the following:

- Individual conclusions contained therein on topics such as market definition, market impact and scope of supply are not fully agreed with.

- It is acknowledged that KommAustria dealt with the FCA's statements of opinion in the decision and also initiated additional fact-finding by the official expert on the basis of the FCA's comments, even though it came to a different conclusion than the FCA did.
- However, if it should turn out that in future the provision of the online service "topos.ORF.at" goes beyond the subject matter of the preliminary order review decision assumed by KommAustria, the FCA is of the opinion that new facts exist that would require submission of a further application and a subsequent preliminary contract review procedure.
- In the reasons for KommAustria's decision, willingness was signalled, at least with regard to certain aspects, to examine factual elements that had not been dealt with in the decision in a new procedure.
- The FCA refrains from appealing against this decision. However, it will monitor further developments and evaluate them with regard to compliance with the subject matter of the application as delimited by the decision.

6.1.2 ORF preliminary contract review procedure for the classical-music online platform "Fidelio"

On 8 July 2021, the ORF applied for approval of the proposal for a classical-music online platform "Fidelio" under public law (www.myfidelio.at) pursuant to § 6a (3) ORF-G.

Fidelio is currently on the market as an online portal for classical music and, since its foundation in 2016, has been run as a joint venture between ORF and Unitel GmbH & Co. Cartel Court (Unitel). Fidelio has over 1,500 hours of programme from 7 decades of collaboration between ORF, Unitel and renowned cultural institutions.

As a service under public law, Fidelio is intended to provide ORF productions (in-house, commissioned and joint productions of the ORF) and contents from the field of classical music broadcast in the ORF programme as a paid on-demand service. Furthermore, Fidelio is intended to present classical content from ORF archives and content that was not broadcast in its entirety on a linear basis (additional content, making-of background stories). Third-party productions should be made available only to a limited extent (maximum 10% of the catalogue volume). Fidelio is also to be used as a teaching tool and

digital stage for music schools, educational institutions and universities in the field of music and art. The freely accessible blog “Leonore and Florestan” with background information, event tips and interviews is also to be continued. The offer is to be marketed commercially.

On 15 July 2021, the FCA was requested by KommAustria (KOA) to comment on this ORF application within six weeks in accordance with § 6a (4) 2 of the ORF-G; the FCA was informed of this request. The FCA’s statement of opinion was made on 26 August 2021 and address the following issues:

Separation of commercial and public-law interests: Fidelio is currently being run jointly by ORF and Unitel as a commercial company; the transfer to the public service remit raises complex issues of ORF-G and EU state aid law.

Coverage by the public service online mandate of the ORF-G: here it is questionable whether Fidelio, as a specialised offering, does not fall under the prohibited list of specialised and target-group-specific online offerings in § 4f (2) 26 of the ORF-G. It is also unclear whether and to what extent the ORF is allowed to reuse archive content on the basis of the current legal situation, or to continue the blog Leonore & Florestan without a temporal limit on the content made available.

Further topics of discussion arise in connection with the admissibility of the advertising marketing of archive content or, in particular, of content intended for the field of education, children and young people, as well as the impact of the new offer on similar offers on the market. The proceedings are pending.

6.2 Österreichische Postbus AG – Opinion of the FCA on the award of the contract

On 2 October 2020, the Commission received a request under Article 35 of Directive 2014/25/EU (hereinafter the “Directive”) from Österreichische Postbus AG (hereinafter ÖPAG). ÖPAG’s application for exemption from the Federal Public Procurement Act (BVerG) concerns non-commercial bus transport services in Austria. According to Art 34 of the Directive, companies can be exempted from the scope of application of the BVerG if they are exposed to direct competition on the market in their activities. On 21 December 2020, the European Commission asked the FCA, as an independent authority not bound by directives, to comment on ÖPAG’s application. The non-conclusive examination by the FCA revealed that legal and factual access restrictions

in the area of non-commercial bus transport services currently predominate, so that it could not be assumed that ÖPAG was under competitive pressure in its activities and the application would be justified under Art 35 of the Directive. A corresponding statement of opinion by the FCA was submitted on 12 March 2021 and has also been brought to the attention of ÖPAG in the course of the proceedings before the EC.

6.3 Opinions by the FCA on legislative projects

The FCA has commented on draft legislation related to its area of responsibility in the context of (pre-)parliamentary review procedures:

KaWeRÄG 2021

This draft submitted jointly by the Federal Ministry of Justice and the Federal Ministry for Digital and Economic Affairs was intended, on the one hand, to take account of the obligation to implement Directive 2019/1 (see also section ECN), and, on the other hand, to adapt Austrian anti-trust law to the requirements of modern economic life, in particular the digital economy.

In its comprehensive statement of opinion, the FCA criticised that the requirements of the Directive regarding the independence and resources of the FCA had not been met. Thus, neither the long-standing grievance that the FCA's regular budget is not even sufficient to cover foreseeable fixed costs has been remedied, nor has the FCA been granted autonomy in matters of personnel (service authority) and independent use of budget funds (budget-managing body). Moreover, the draft provided for a flagrant deterioration of the status quo ante with a virtually unrestricted supervisory right of the Federal Minister for Digital and Economic Affairs over the FCA – which was later tuned down due to massive criticism from all sides in the review process – as well as the restriction of the possibilities to comment on general competition policy issues beyond the enforcement in individual cases in the sense of exercising its competition advocacy function.

Apart from the implementation of the Directive, the FCA has pointed out that the new “digitisation provisions”, which are recognisably based on model provisions in the German Act against Competition Restrictions but fall short in crucial points, do not appear to be suitable for generating real added value compared to the law already in force. The same applies to the adoption of the SIEC test constituting the European standard (concomitantly with the market dominance test) into merger control, although this is to be assessed positively as a matter of principle and has

been demanded by the FCA for a long time, but was ultimately not adopted. Similarly, the restructuring and expansion of the grounds for justification under merger control law is driven by objectives of corporate and interest policy, but refuses to accept any well-founded economic evidence. With regard to the “sustainability exemption” from the prohibition of cartels, the FCA has pointed out the narrow scope of application in advance, as well as practical difficulties of application.

The FCA has also highlighted the lack of regulation in important areas in the draft. Thus, also in terms of conformity with the Directive, the relationship between measures under anti-trust law and penal corporate sanctions would have had to be clarified in terms of the primacy of anti-trust law in order to ensure effective and uniform enforcement of Articles 101 and 102 of the TFEU. Likewise, the regulation of § 209b of the Austrian Code of Criminal Procedure regarding the protection of cooperating companies/employees from penal prosecution in conformity with EU law was reserved for a later date.

In the area of merger control, the FCA, supported by extensive statistics, pushed for the implementation of a second domestic turnover threshold in order to counteract the steadily increasing number of mergers requiring registration in Austria, many of which, however, have little relation to domestic markets. This demand was ultimately met with the government bill.

[FCA statement of opinion of 17 May 2021 on the Austrian Cartel and Competition Law Amendment Act 202 \(KaWeRÄG 2021\)](#)

Austrian Local Supply Act (*Nahversorgungsgesetz*)

The draft law submitted by the BMDW concerns the transposition of Directive (EU) 2019/633 (UTP Directive) into national law.

In its statement of opinion, the FCA particularly pointed out the unclear relationship between the investigative powers under the Austrian Competition Act and the Austrian Local Supply Act, which result from similar but not congruent parallel regulations. Another consequence of this regulatory technique would be that the FCA could act independently and free of instructions in individual areas of responsibility under the Austrian Local Supply Act, but this would not be ensured in other areas. The coexistence of the group of other application entitlements with regard to the existing and the new instruments of the Austrian Local Supply Act is equally unclear. For reasons of efficiency of

enforcement and due to the lack of coverage by the Directive, the involvement of the BMDW as a central contact point was also critically questioned.

From a substantive point of view, in connection with the insertion of two further practices prohibited per se yet not provided for by the Directive, reference was made to the practical difficulties to be expected. This concerns, on the one hand, the completely unclear relationship to the fact of general market dominance under anti-trust law, and, on the other hand, the use of indeterminate language, which requires interpretation and is thus detrimental to direct application.

[FCA statement of opinion of 21 October 2021 on the amendment of the Austrian Local Supply Act](#)

“Major” leniency programme – §§ 209a and 209b of the Austrian Code of Criminal Procedure (StPO)

With a draft submitted on 25 October 2021 for the revision and extension of the leniency programmes within the Austrian Code of Criminal Procedure, the Austrian Ministry of Justice wanted to prevent the expiry without replacement of these provisions, which were only valid for a limited period, at the end of 2021. Of particular relevance to the FCA is § 209b of the Austrian Code of Criminal Procedure (StPO), which safeguards the effectiveness of the leniency programme under anti-trust law (§ 11b of the Austrian Competition Act) by allowing cooperating employees to expect immunity from prosecution even in criminal proceedings. Centrally, the FCA made reference to this and to the requirement under EU law for the existence of such a regulation, which now also results from Art 23 of Directive 2019/1, which is why the proposed enactment of these provisions, again only for a limited time, is incomprehensible and must be critically questioned.

The stronger orientation towards the individual employee's contribution to clarification, which is one aspect in the effort to achieve earlier cooperation of the company and its employees with the law enforcement authorities, was seen as positive because it is in line with the aforementioned EU law requirement. To further support this objective, it was suggested that the Federal Cartel Prosecutor be enabled to inform the public prosecutor's office already earlier, namely at the time of the FCA's provisional declaration pursuant to § 11b (3) of the Austrian Competition Act, about the employees eligible for the legal benefit.

Apart from a still-pending final legal clarification of the relationship between fines under anti-trust law and penal sanctions in the context of association liability, the FCA pointed out the need for an explicit provision to obtain immunity from prosecution also for the associations themselves – comparable to the former paragraph 3 of § 209b of the Austrian Code of Criminal Procedure, which was omitted due to a legislative oversight. This is of central importance because, in relation to the cartel authorities, it is the company that is the addressee and central actor of the leniency programme.

[FCA statement of opinion of 8 November 2021 on the amendment of the Austrian Code of Criminal Procedure](#)

Austrian Telecommunications Act (*Telekommunikationsgesetz*)

In connection with the draft for a new Austrian Telecommunications Act, the FCA has commented on the interfaces and intersections between sectoral regulation and general competition law with the aim of ensuring a smooth interplay and meaningful interaction between these two areas of law and enforcement. In this context, reference was made to the long-standing good cooperation between the FCA and RTR. The FCA has therefore expressly welcomed getting involved into proceedings on cooperation between network operators concerning active network components. In addition, the anchoring of mutual cooperation between authorities beyond the direct scope of application of the Austrian Telecommunications Act, as it were as a mirror provision to the regulations in the Austrian Competition Act, was successfully suggested.

Federal Statistics Act (*Bundesstatistikgesetz*)

The FCA has expressly welcomed the proposed enabling of access by scientific institutions to individual statistical data of the Federal Institute “Statistics Austria” for performance of statistical analyses for scientific purposes. For the purposes of the FCA’s research-related areas of activity, such as general investigation of industry sectors, performance of competition monitoring or issuing of opinions from a competition law or economic perspective, it was suggested that the FCA be placed on an equal footing with the institutions benefiting from this.

Austrian Waste Management Act (AWG)

In connection with the proposed regulation on shifting waste transports to rail, which is to be welcomed for reasons of environmental policy, the FCA

has raised the concern that the resulting pressure on waste collectors to be quasi-forced to contract with rail transport companies could create incentives for behaviour that could significantly increase the prices for transport services. This should be counteracted by appropriate accompanying measures.

Exemption from cooperation in the media sector

In connection with a proposal by the Federal Chancellery to facilitate co-operation between media companies by means of amendments to the Austrian Cartel Act in order to enable them to hold their own against internationally operating platform companies, in particular in competition on advertising markets, the FCA participated in an informal consultation. In this context, particular reference was made to the limits of national regulation imposed by EU law, as well as to the numerous possibilities for cooperation compatible with anti-trust law that already exist on the basis of existing law.

7 Annexes

7.1 File accrual in 2021

Aktenanfall 01.01.2021 bis 31.12.2021	1. Qu.	2. Qu.	3. Qu.	4. Qu.	SUMME
Fälle national					
Zusammenschlussanmeldungen	163	159	186	145	653
Sonstige Zusammenschlussakte	4	8	1	5	18
Verbotene Durchführung von Zusammenschlüssen	2	2	2	2	8
Kartellfälle KartG	9	11	4	3	27
Marktmachtmissbrauchsverfahren KartG	4	1	1	5	11
UWG/VerbrSchutz/ORF-Gesetz/TKG	3	5	3	3	14
Fälle Diverses (inkl Auskunftsbeseid)	34	37	17	21	109
SUMME Fälle national	219	223	214	184	840
Fälle Europa					
Kartell- und Marktmachtmissbrauch (EU) - EK	0	2	1	0	3
Fusionsfälle (EU) - EM	104	72	167	109	452
SUMME Fälle Europa	104	74	168	109	455
SUMME Fälle national und Europa	323	297	382	293	1295
Sonstiges					
Hausdurchsuchungen	18	2	0	0	20
Forensische IT	0	19	0	0	19
Administratives	9	11	4	5	29
Internationale Angelegenheiten (IN, OECD)	6	4	1	1	12
Legistik	16	15	17	18	66
Europäische Gerichtsverfahren (EuG Verfahren)	7	3	10	2	22
Wettbewerbskommission	0	0	0	1	1
Eur. Comp. Network	23	27	29	19	98
Diverses (GD, AW, RA, RI, u.a.)	16	14	16	19	65
SUMME Sonstiges	95	95	77	65	332
SUMME gesamt 2021	418	392	459	357	1627

Die Daten beziehen sich auf den Zeitpunkt des Aktenanfalls und können daher von der Zusammenschlusstatistik differieren.

7.2 Fining decisions in Austria from 2002 to 2021

Geldbußentabelle

Based on applications by the Federal Competition Authority and/or the Federal Cartel Prosecutor (official parties) and a legally binding decision. This table is an extract from the last 10 years. The complete table is available on the [FCA website](#).

Branche	Unternehmen	Höhe Geld- bußen in €	Jahr
Hoch- und Tiefbau	STRABAG	45,370,000	2021
Schultaschen	Fond Of GmbH	340,000	2021
Poolreinigungsaus- rüstung	Zodiac Pool Care Europe	294,000	2020
Fahrräder	Specialized Europe B.V.	378,000	2019
Elektronik	Bose Ges.m.b.H.	665,000	2019
Altstoffsammlung	Banner GmbH	60,000	2019
Backwaren	Anker Snack & Coffee Gastronomie- betriebs GmbH	210,000	2019
Mobile Endgeräte	Ingram Micro GmbH	288,888	2018
Tankstellen	A1 Tankstellenbetriebs GmbH	70,000	2018
Elektronik	Devol Austria GmbH	223,000	2018
Kautschuk (Einweg- handschuhe)	Semperit Technische Produkte GesmbH	1,600,000	2018
Elektronik	Pioneer & Onkyo Europe GmbH	120,000	2017
Trockenbau	3P Trockenbau GmbH	185,000	2017
Trockenbau	Kaefer Isoliertechnik Ges.m.b.H	190,000	2017
Elektronik	Robopolis GmbH	208,200	2017
Trockenbau	Perchtold Trockenbau Wien GmbH	48,000	2017
Trockenbau	E+H Trockenbau GmbH	110,000	2017
Trockenbau	Tüchler Ausbau GmbH	130,500	2017
Trockenbau	Wagner & Jüptner GmbH	22,500	2017
Elektronik	Makita Werkzeug Gesellschaft m.b.H.	1,560,000	2016
Elektronik	De'Longhi-Kenwood GmbH	650,000	2016
Lebensmittelhandel	Spar Österreich-Gruppe II	10,210,000	2016
Lebensmittelhandel	RAUCH Fruchtsäfte GmbH & Co OG	1,700,000	2016
Güterverkehr und Logistik	ETRANSA Speditions AG	3,500,000	2016
Güterverkehr und Logistik	Schenker & Co AG	318,000	2016

Branche	Unternehmen	Höhe Geld- bußen in €	Jahr
Güterverkehr und Logistik	PANALPINA Welttransport GmbH	2,000,000	2016
Güterverkehr und Logistik	Rail Cargo Logistics Austria GmbH	184,000	2016
Elektronik	Hewlett-Packard Gesellschaft mbH	640,000	2015
Elektronik	KTM Fahrrad GmbH	112,000	2015
Elektronik	United Navigation GmbH	100,000	2015
Elektronik	Samsung Electronics Austria GmbH	1,050,000	2015
Lebensmittelhandel	Spar Österreich-Gruppe	30,000,000	2015
Elektronik	Nikon GmbH (Zweigniederlassung Wien)	170,000	2015
Stahlhandel	Frankstahl Rohr- und Stahlhandels- gesellschaft mbH	147,000	2015
Lebensmittelhandel	Pago International GmbH	152,460	2015
Lebensmittelhandel	Pfeiffer HandelsgmbH und die Ziel- punkt GmbH	562,500	2015
Stahlhandel	Großschädl Stahlgroßhandel Gesell- schaft m.b.H.	47,500	2015
Stahlhandel	Eisen Wagner Gesellschaft mbH	150,000	2015
Stahlhandel	Filli Stahlgroßhandelsgesellschaft m.b.H	32,500	2015
Stahlhandel	Mechel Service Stahlhandel Austria GmbH	200,000	2015
Sportartikelhandel	Sport Pangratz & Ess GmbH, Alber Sport GmbH, Sport Jennewein Martin e.U., Sport Fauner GmbH & Co KG	419,000	2015
Lebensmittelhandel	Vöslauer Mineralwasser AG	653,775	2015
Lebensmittelhandel	Brauerei Joseph Baumgartner GmbH	56,250	2014
Lebensmittelhandel	NÖM AG	583,200	2014

Branche	Unternehmen	Höhe Geld- bußen in €	Jahr
Speditionen	<p>Speditionssammelladungskonferenz ABX Logistics (Austria) GmbH*, Alpentrans Spedition und Transport GmbH*, Logwin Solutions Austria GmbH (vormals Logwin Invest Austria GmbH), DHL Express (Austri- a) GmbH, G. Englmayer Spedition GmbH, Rail Cargo Logistics-Austria GmbH (vormals Express-Interfracht Internationale Spedition GmbH), A. Ferstl Speditionsgesellschaft mbH*, Spedition, Lagerei und Beförderung von Gütern mit Kraftfahrzeugen Alois Herbst GmbH & Co KG *, Johann Huber Spedition und Trans- portgesellschaft mbH, Kapeller Internationale Spedition GmbH, Keimelmayr Speditions- u. Transport GmbH*, Koch Spedition KG (vormals Koch Speditions GmbH), Kühne + Nagel GmbH, Lagermax Inter- nationale Spedition Gesellschaft mbH, Morawa Transport GmbH in Liquidation, Johann Ogris Inter- nationale Transport- und Speditions GmbH, Logwin Road + Rail Austria GmbH, Internationale Spedition Schneckenreither Gesellschaft mbH, Leopold Schöffl GmbH & Co KG*, „Spedpack“-Speditions- und Ver- packungsgesellschaft mbH*, Johann Strauss GmbH, Thomas Spedition GmbH*, Traussnig Spedi-tion GmbH, Treu SpeditionsgesmbH, Spedition Anton Wagner GmbH*, Gebrüder Weiss GmbH, Wildenhofer Spedition und Transport GmbH, Marehard u. Wuger Inter-nat. Speditions- u. Logistik GmbH* und Rail Cargo Austria AG</p> <p>* Über diese Unternehmen wurden nur geringe Geldbußen verhängt, weil sie trotz SSK-Mitgliedschaft keine Umsätze mit nationalen Sammelguttransporten erzielt hat- ten, eine sehr untergeordnete Rolle im Rahmen der SSK gespielt und teilweise mit der BWB kooperiert haben.</p>	17,500,000	2014
Lebensmittelhandel	MPREIS Warenvertriebs GmbH	225,000	2014
Lebensmittelhandel	Sutterlüty Handels GmbH	78,750	2014

Branche	Unternehmen	Höhe Geld- bußen in €	Jahr
Dämmstoffe	Austrotherm GmbH	187,500	2014
Lebensmittelhandel	Stieglbrauerei zu Salzburg GmbH; Stiegl Betriebsholding GmbH; Stiegl Getränke & Service GmbH & Co. KG	196,875	2014
Elektronik	Grundig Intermedia GmbH	372,000	2014
Lebensmittelhandel	Brauerei Hirt Gesellschaft mbH	58,500	2014
Elektronik	SSA Fluidra	50,000	2014
Lebensmittelhandel	AFS Franchise-Systeme	225,000	2014
Dämmstoffe	swisspor Österreich GmbH & Co KG	290,000	2014
Lebensmittelhandel	Braucommune in Freistadt	52,500	2014
Elektronik	Hans Lurf GmbH	100,000	2014
Lebensmittelhandel	Mohrenbrauerei August Huber KG	82,500	2014
Elektronik	Media-Saturn BeteiligungsgmbH	1,230,000	2014
Elektronik	Pioneer Electronics Deutschland GmbH	350,000	2014
Lebensmittelhandel	Privatbrauerei Zwettl Karl Schwarz Gesellschaft m.b.H.	82.500	2014
Lebensmittelhandel	Brauerei Schloss Eggenberg Stöhr GmbH & Co KG	57.000	2014
Lebensmittelhandel	Vereinigte Kärntner Brauereien AG	195.000	2014
Lebensmittelhandel	Kärntner Milch reg.GenmbH	375.000	2013
Lebensmittelhandel	Vorarlberger Mühlen- und Misch- futterwerke GmbH	58.500	2013
Lebensmittelhandel	Brauerei Ried e.Gen.	52.500	2013
Lebensmittelhandel	Emmi Österreich GmbH	210.000	2013
Dämmstoffe	bauMax AG	90.000	2013
Lebensmittelhandel	REWE International Lager und Trans- port GmbH; Merkur Warenhandels- AG; Billa AG	20.800.000	2013
Elektronik	Philips Austria GmbH (Consumer Lifestyle)	2.900.000	2013
Lebensmittelhandel	Berglandmilch eGen	1.125.000	2013
Dämmstoffe	Steinbacher Dämmstoff GmbH	600.000	2013
Dämmstoffe	Bauhaus Depot GmbH	100.000	2012
Dämmstoffe	Hornbach Baumarkt GmbH	100.000	2012
Dämmstoffe	OBI Bau- und Heimwerkermärkte	235.000	2012
Bier	BRAU UNION Österreich Aktiengesellschaft	750.000	2012
Bier	Ottakringer Brauerei AG	190.000	2012
Verbotene Durchführungen von Zusammenschlüssen			
Verbotene Durch- führung eines Zusammenschlusses	Ondufin SAS; alwitra GmbH	64.000	2021

Branche	Unternehmen	Höhe Geld- bußen in €	Jahr
Verbotene Durchführung eines Zusammenschlusses	Naxicap Partners SA	83.000	2021
Verbotene Durchführung eines Zusammenschlusses	SMS group GmbH	30.000	2021
Verbotene Durchführung eines Zusammenschlusses	Facebook, Inc.; GIPHY, Inc.	9.600.000	2021
Verbotene Durchführung eines Zusammenschlusses	OneMed Holding AB, SMEDICO AG	30.000	2021
Verbotene Durchführung eines Zusammenschlusses	Salesforce.com, Inc., USA	100.000	2021
Verbotene Durchführung eines Zusammenschlusses	Castanea Rubra Assets GmbH	100.000	2020
Verbotene Durchführung eines Zusammenschlusses	Aktieselskabet af 5.5.2010	75.000	2019
Verbotene Durchführung eines Zusammenschlusses	Eurazeo SE	30.000	2019
Verbotene Durchführung eines Zusammenschlusses	KTM AG und Kiska GmbH	60.000	2019
Verbotene Durchführung eines Zusammenschlusses	WIG Wietersdorfer Holding GmbH	70.000	2019
Verbotene Durchführung eines Zusammenschlusses	Lagardère Travel Retail Austria GmbH / CP Convenience Partner GmbH	17.500	2019
Verbotene Durchführung eines Zusammenschlusses	REWE International AG	212.000	2019
Verbotene Durchführung eines Zusammenschlusses	Erne Group GmbH; TONOS GmbH	30.000	2019
Verbotene Durchführung eines Zusammenschlusses	TCH s.r.l.	55.000	2018
Verbotene Durchführung eines Zusammenschlusses	Containex Container-Handels-gesellschaft mbH; Česko-slezská výrobní a.s	100.000	2018
Verbotene Durchführung eines Zusammenschlusses	Luxembourg Holdings 70 S.a.r.l.; Texbond S.p.A.	40.000	2018

Branche	Unternehmen	Höhe Geld- bußen in €	Jahr
Verbotene Durchführung eines Zusammenschlusses	Stahl Lux 2 S.A.	185.000	2017
Verbotene Durchführung eines Zusammenschlusses	Comparex AG	40.000	2017
Verbotene Durchführung eines Zusammenschlusses	Comparex AG	30.000	2017
Verbotene Durchführung eines Zusammenschlusses	Vulcan Holdings, L.P. und Apollo Management L.P.	70.000	2017
Verbotene Durchführung eines Zusammenschlusses	SWOCTEM GmbH; Dr.-Ing. E.h. Friedhelm Loh	11.000	2017
Verbotene Durchführung eines Zusammenschlusses	Europapier International AG	750.000	2016
Verbotene Durchführung eines Zusammenschlusses	Grosso holding Gesellschaft mbH	50.000	2015
Verbotene Durchführung eines Zusammenschlusses	W. Hamburger GmbH	40.000	2015
Verbotene Durchführung eines Zusammenschlusses	VAMED Management und Service GmbH & Co KG	155.000	2015
verbotene Durchführung eines Zusammenschlusses	Graz-Köflacher Bahn- und Busbetrieb GmbH	40.000	2015
verbotene Durchführung eines Zusammenschlusses	Ankerbrot AG	20.000	2015
verbotene Durchführung eines Zusammenschlusses	21 Centrale Partners SA; Microcar S.A.S	30.000	2015
verbotene Durchführung eines Zusammenschlusses	Stahlgruber Holding GmbH	23.000	2014
verbotene Durchführung eines Zusammenschlusses	2. Servco Pacific Inc.	8.800	2014
verbotene Durchführung eines Zusammenschlusses	TGP / SERVCO / Fender	8.800	2014
verbotene Durchführung eines Zusammenschlusses	DB Mobility	100.000	2013

Branche	Unternehmen	Höhe Geld- bußen in €	Jahr
verbotene Durch- führung eines Zusammenschlusses	Fachzeitschriften	5.000	2013
verbotene Durch- führung eines Zusammenschlusses	Klamt-Verlag GmbH & Cie (Special Interest Zeitschriften)	10.000	2013
verbotene Durch- führung eines Zusammenschlusses	WAB Privatstiftung	15.000	2013
verbotene Durch- führung eines Zusammenschlusses	AGROFERT Holding a.s.; ECOPRESS a.s.	7.000	2013
verbotene Durch- führung eines Zusammenschlusses	Alpenmilch / Käsehof	165.443	2012
verbotene Durch- führung eines Zusammenschlusses	Conrad Electronic Linz GmbH	11.667	2012
verbotene Durch- führung eines Zusammenschlusses	EPPG/ATEC	5.000	2012
verbotene Durch- führung eines Zusammenschlusses	Conwert/ ECO	25.000	2012
verbotene Durch- führung eines Zusammenschlusses	Alpenpumpe/Schwenk/Berger	5.000	2012
verbotene Durch- führung eines Zusammenschlusses	A&F/Cellstrom	5.000	2012
verbotene Durch- führung eines Zusammenschlusses	21 Centrale Partner SA/FRA (Kfz-Bereich)	200.000	2011
Stand: 12/2021	Summe aller Geldbußen / Zwangsgelder	257.633.608	2002- 2021

7.3 Merger statistics

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5183	Rather Outdoors Corporation; W.C. Bradley Zebco Holdings, Inc	Fristablauf
5184		Fristablauf
5185	The Blackstone Group Inc.; Liftoff Mobile Inc	Fristablauf
5186	OneMed Holding AB; Diashop GmbH; EvivaMed Handelsgesellschaft mbH; Med4Trade GmbH; Eviva-Med Distribution GmbH	Fristablauf
5187	Atom Holdings Co., Ltd.; Rigaku Corporation	Fristablauf
5188	Post 102 Beteiligungs GmbH; D2D - direct to document GmbH; Raiffeisen Informatik GmbH & Co KG	Zusagen in Phase I
5189	Aptos Inc.; LS Retail ehf	Fristablauf
5190	VKR Holdings A S; Dovista A S; Arbonia Fenster	Fristablauf
5191	Weichai-Gruppe; Fischer Fuel Cell Compressor AG	Fristablauf
5192	Funimation Global Group, LLC; Ellation Holdings, Inc	Fristablauf
5193	IBM International Group B.V.; Bluvolt Oy	Prüfungsverzicht
5194	OneMed Holding AB; Smedico AG	Fristablauf
5195	FUJIFILM Corporation; Diagnostic Imaging Geschäftsbereichs von Hitachi, Ltd	Zusagen in Phase I
5196	Investindustrial VI LP; ODE Group	Fristablauf
5197	Valeo Foods Group; Schluckwerder Holding GmbH	Fristablauf
5198	Gilead Sciences, Inc.; MYR GmbH	Fristablauf
5199	Honeywell International, Inc.; Sparta Systems, Inc	Fristablauf
5200	ISS Austria Holding GmbH; ISS Ground Services GmbH	Fristablauf
5201	Thomas Bravo, L.P.; RealPage, Inc	Fristablauf
5202	Permira Holdings Limited; DMM Parent, Inc	Fristablauf
5203	Anchorage Capital Group, L.L.C.; Europcar Mobility Group SA	Prüfungsverzicht
5204	Robert Bosch GmbH; Purmo Group Oy Ab Ltd.; Evrora-diators LLC	Fristablauf
5205	PBS Holding AG; den Unternehmensbereich internationale Rahmenverträge für die Belieferung mit Büromaterial der Staples Solutions B.V	Fristablauf
5206	EDIFY S.A.; Ligier Développement	Fristablauf
5207	Alba Group Plc & Co KG.; Alba International Recycling GmbH; Alba Services Holding GmbH	Fristablauf
5208	EWE AG; Enercon GmbH	Fristablauf
5209	Gilde V. Management; Muon B.V.; Louwers Hanique B.V	Fristablauf
5210	SeneCura Kliniken und Heimebetriebsgesellschaft m.b.H.; EMG Akademie für Gesundheit GmbH	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5211	Pai Partners S.à.r.l.; My Flowers S.A.S	Fristablauf
5212	Baxter Healthcare SA; Cilag GmbH International	Fristablauf
5213	P.Dussmann Gesellschaft m.b.H.; Janus Gruppe Ges.m.b.H	Fristablauf
5214	DSR Gruppe; Implenla Real Estate GmbH	Fristablauf
5215	Kies Verwaltung GmbH; Ing. Hans Lang Gesellschaft m.b.H	Fristablauf
5216	Mondi Gruppe; Mercer Holz GmbH; Wood & Paper a.s	Fristablauf
5217	Amphenol Corporation; MTS Systems Corporation	Fristablauf
5218	Zama Corporation Limited; Elrad International d.o.o; ZE Electronic Manufacturing	Fristablauf
5219	Recticel SANV; FoamPartner Group	Zurückziehung
5220	LafargeHolcim Ltd.; Firestone Building Products Company, LLC	Fristablauf
5221	Schneider Group; ETAP Group	Fristablauf
5222	Penguin Random House LLC; Bertelsmann SE & Co. KGaA; Simon & Schuster	Fristablauf
5223	AE Holding; QIQ Qcentris Holding AG	Fristablauf
5224	Montagu Private Equity LLP; Mozart TopCo Limited	Fristablauf
5225	SCUR-Alpha 1242 GmbH; Skytanking Holding GmbH	Fristablauf
5226	Petrol d.d.; CRODUX DERIVATI DVA d.o.o	Fristablauf
5227	Mondi AG; Olmuksan International Paper Ambalaj Sanayi ve Ticaret A.S.LC	Fristablauf
5228	Equistone Partners Limited; Kusters Gruppe	Fristablauf
5229	Francisco Partners Management L.P.; Native Instruments Holding GmbH	Fristablauf
5230	SAP SE; Signavio GmbH	Fristablauf
5231	Südbayerisches Portland-Zementwerk Gebrüder Wiesböck & Co. GmbH; Ganser Baustoffe GmbH & Co. KG	Fristablauf
5232	Ultra Clean Holdings, Inc. (USA); Ham-Let Israel Canada Ltd. (Israel)	Fristablauf
5233	Partners Group AG; Idera Parent, L.P	Fristablauf
5234	Ardian SA; Freshstream Investment Partners LLP; Bregal Freshstream LP	Fristablauf
5235	Moser Holding AG; Tirol TV GmbH; P8 GmbH	Fristablauf
5236	Vivendi SE; Prisma Media SNC; Upload Productions SASU	Fristablauf
5237	Biscuit Holding SAS; Dan Cake, S.A	Fristablauf
5238	Spitfire Parent, Inc.; Triton Fund V L.P.; ACRE Operating Group, LLC	Fristablauf
5239	T&W Medical A/S; Equity VI Limited; WS Audiology A/S	Fristablauf
5240	Moncler S.p.A.; Sportswear Company S.p.A	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5241	salesforce.com, inc.; Slack Technologies, Inc	Fristablauf
5242	Philips Holding USA Inc.; Vita Topco, Inc	Fristablauf
5243	PPG Industries, Inc.; Wörwag Gruppe	Fristablauf
5244	Evergood H&F Lux S.á r.l; Nexi S.p.A	Fristablauf
5245	Lenzing Aktiengesellschaft; Palmers Textil Aktien- gesellschaft; Hygiene Austria LP GmbH	Fristablauf
5246	EQT AB (publ); Exeter Property Group	Fristablauf
5247	MTH Retail Group Holding GmbH; OFFIX Holding AG	Fristablauf
5248	Guangdong Galanz Household Appliances Manufactu- ring Co. Ltd.; Whirlpool Corporation; Whirlpool (China) Co., Ltd	Fristablauf
5249	Equistone Partners Europe SAS; Waycom Group SAS	Fristablauf
5250	GlobalWafers Co., Ltd.; Siltronic AG	Fristablauf
5251	Corween Investments sp. z o.o.; ISD Huta Częstochowa sp. z o.o. w upadłości	Fristablauf
5252	Carlyle; Varo Energy B.V	Fristablauf
5253	Fiege Logistik Stiftung & Co. KG; Retromotion GmbH	Fristablauf
5254	Nighthawk UK HoldCo Limited; Nexthink S.A	Fristablauf
5255	Centerbridge Partners, L.P.; Garrett Motion Inc	Fristablauf
5256	Oaktree Capital, LLC; Garrett Motion Inc	Fristablauf
5257	Karo Pharma AB; Teva Gruppe	Fristablauf
5258	Goldman Sachs Group, Inc.; CapVest Strategic Oppor- tunities 4 SCSp	Fristablauf
5259	Vivaldi Holdings S.à.r.l.; VW Volleyball World SA	Fristablauf
5260	Reaper Topco Limited; The Herjavec Group Inc	Fristablauf
5261	Banasino Investments Limited; Surteco Group SE	Fristablauf
5262	Sony Music Entertainment; AWAL und Kobalt Neighbou- ring Rights	Fristablauf
5263	Invest Unternehmensbeteiligungs Aktiengesellschaft; Raiffeisen OÖ Invest GmbH & Co KG; Grünwald Hol- ding GmbH	Fristablauf
5264	Compagnia Siderurgica Italiana S.r.l.; Valsabbia Praha S.r.o	Fristablauf
5265	Lanxess AG; THESEO France SAS; THESEO Deutsch- land GmbH; Biolink Ltd.; THESEO Saude Animal Ltda	Fristablauf
5266	SERVICE 24 Notdienst GmbH; ADAC TruckService GmbH; NewCo	Fristablauf
5267	Trinseo S.A.; Arkema S.A	Fristablauf
5268	Blitz F21-358 GmbH; SCHOCK GmbH	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5269	Nestlé S.A.; Islay New Group Holding S.A.; Browne Holding S.À.R.L	Fristablauf
5270	Volkswagen AG; TraceTronic One GmbH	Fristablauf
5271	Akunalux S.à r.l.; EnBW WindInvest GmbH & Co. KG	Fristablauf
5272	The Estée Lauder Companies Inc.; Deciem Beauty Group Inc	Fristablauf
5273	Inter IKEA Holding B.V.; Vermögenswerte und Rechte des Retail Equipment Geschäfts von Ingka Procurement Group	Fristablauf
5274	eww ag; Wels Strom GmbH; Energie AG Oberösterreich Umwelt Service	Fristablauf
5275	eww ag; Wels Strom GmbH	Fristablauf
5276	Embracer Group AB; Easybrain Group Ltd	Fristablauf
5277	Electronic Arts Inc.; Glu Mobile Inc	Fristablauf
5278	Arçelik A.Ş.; Hitachi Global Life Solutions, Inc	Fristablauf
5279	Robert Bosch GmbH; Qingling Motors (Group) Co. Ltd	Fristablauf
5280	AlpInvest Partners B.V.; Bridgepoint Development Capital Portfolio II A LP und Bridgepoint Development	Fristablauf
5281	Barentz International B.V.; NOACK & Co. GmbH	Fristablauf
5282	Recticel SA/NV; FoamPartner Group	Zusagen in Phase I
5283	Autohaus Sulzbacher GmbH & Co KG; AVAG Holding SE; Autohaus Mitterbauer GmbH	Fristablauf
5284	Franz Haniel & Cie. GmbH; Nordian Acquisition 6 B.V.,	Fristablauf
5285	Schmid Metall GmbH; Modine Group	Fristablauf
5286	Cidron Aida Bidco Limited; Advanz Pharma Corporation Limited	Fristablauf
5287	Illinois Tool Works Inc.; MTS Systems Corporation	Fristablauf
5288	Gienanth Group GmbH; Trompetter Guss GmbH; KernWerk GmbH	Prüfungsverzicht
5289	Hyland Software, Inc.; Nuxeo Group Limited	Fristablauf
5290	SOF-11 Klimt CAI S.à.r.l.; CA Immobilien Anlagen Aktiengesellschaft	Fristablauf
5291	Krankenhaus der Barmherzigen Schwestern Ried Betriebsgesellschaft m.b.H.; A.Ö. Krankenhaus St. Josef Braunau GmbH; Ordensklinikum Ried Holding GmbH;	Fristablauf
5292	Francisco Partners Management L.P.; MyHeritage Ltd	Fristablauf
5293	Convergenta Invest GmbH; CECONOMY AG	Fristablauf
5294	BDT Capital Partners, LLC; Transtech Glass Investment Ltd	Fristablauf
5295	HP Inc.; sämtliche Vermögenswerte des Geschäftsbereichs HyperX, des Gaming-Zubehörgeschäfts von Kingston Technology Corporation, USA	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5296	EasyPark Group SAS; PARK NOW Group Holding B.V	Zurückziehung
5297	Pierer Industrie AG; abatec group AG	Fristablauf
5298	Liechtenstein Beteiligungs GmbH; PV-Invest GmbH	Fristablauf
5299	Questel Germany Holding GmbH; PP European IP Holding GmbH; PP IP Holding GmbH	Fristablauf
5300	STRABAG Real Estate GmbH; HYPO NOE Leasing GmbH; Caverion Österreich GmbH	Fristablauf
5301	BlueCo GmbH; GBA Investment GmbH	Fristablauf
5302	Asamer Kies- und Betonwerke GmbH; KIAS Recycling GmbH	Fristablauf
5303	ROBEL Holding GmbH; Schweerbau GmbH & Co KG; Mevert Maschinenbau GmbH & Co. KG; Schweerbau International GmbH & Co. KG	Fristablauf
5304	Sartorius AG; die gesamte Chromatographie Prozess-equipment Sparte von Novasep Process SAS	Fristablauf
5305	DCC plc; Wörner Medizinprodukte Holding GmbH	Fristablauf
5306	Thalia Bücher GmbH; Lehmanns Holding GmbH	Fristablauf
5307	Intermediate Capital Group plc; Waterland Strategic Opportunities Fund I C.V.; UP Holding NV	Fristablauf
5308	Ardian France S.A.; Jakala S.p.A	Fristablauf
5309	Plansee Holding AG; Ceratizit S.A	Fristablauf
5310	Wipro Limited; Capco-Gruppe	Fristablauf
5311	Thoma Bravo, L.P.; Calabrio, Inc	Fristablauf
5312	Sandvik Aktiebolag; DSI Underground Holdings S.à.r.l	Fristablauf
5313	Staci SAS; Base Logistics Group B.V	Fristablauf
5314	Thoma Bravo L.P.; TietoEVRY Oyj	Fristablauf
5315	capiton VI GmbH & Co. Beteiligungs KG; Medical Business Center GmbH; ADL-Gruppe GmbH	Fristablauf
5316	Equistone Partners Europe Limited; Franke Water Systems AG	Fristablauf
5317	Walki Group OY; Plasbel Plásticos, S.A.U	Fristablauf
5318	ICON plc; PRA Health Sciences, Inc	Fristablauf
5319	LVMH Moët Hennessy-Louis Vuitton SE; AOS Enterprises, LLC; Ace of Spades Holdings, LLC	Fristablauf
5320	BorgWarner Inc.; AKASOL AG	Fristablauf
5321	Platinum Equity Group; Runtime Collective Limited ("Brandwatch")	Fristablauf
5322	Kirchdorfer Zementwerk Hofmann Gesellschaft m.b.H.; SRP Sekundär Rohstoff Produktion GmbH	Fristablauf
5323	Liechtensteinische Landesbank Aktiengesellschaft; Credit Suisse (Luxembourg) S.A. Zweigniederlassung Österreich,	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5324	Knorr Bremse AG; Evac GmbH; Monogram Train LLC	Fristablauf
5325	Thoma Bravo Global, LLC; Talend S.A	Fristablauf
5326	Health Solutions Investments S.à.r.l.; OLP Top S.A.; AHS Europe S.A	Fristablauf
5327	Kreditanstalt für Wiederaufbau (KfW); HENSOLDT AG	Fristablauf
5328	Sandoz AG; GlaxoSmithKline Plc	Fristablauf
5329	Bregal Unternehmerkapital III SCSp; AF Eagle Holding GmbH	Fristablauf
5330	Volkswagen AG; Rimac Automobili d.o.o	Fristablauf
5331	Brightfolk AS; Entertainment Trading ApS	Fristablauf
5332	Apollo Management, L.P.; Vallourec, S.A	Fristablauf
5333	Andritz Aktiebolag; GE Power Sweden AB	Fristablauf
5334	Deutsche Beteiligungs AG; R+S Beteiligungs GmbH	Fristablauf
5335	Mutares SE & Co. KGaA; RDM La Rochette S.A.S	Fristablauf
5336	American Securities LLC; Conair LLC	Fristablauf
5337	De'Longhi Benelux S.A.; Eversys Holding S.A	Fristablauf
5338	Facebook, Inc.; Kustomer, Inc	Fristablauf
5339	INDEX-Beteiligungs-GmbH; One Click Metal GmbH	Fristablauf
5340	TDR Capital LLP; BPP Holdings Limited PP	Fristablauf
5341	Kirchdorfer Zementwerk Hofmann Gesellschaft m.b.H.; Team Asche GmbH	Fristablauf
5342	Dr. Ing. h.c. F. Porsche Aktiengesellschaft; Custom Cells Itzehoe GmbH; P3 group GmbH	Zurückziehung
5343	Universal-Investment-Luxembourg S.A.; Bayerische Versorgungskammer; Am Schweizergarten Drei Beteiligungen GmbH & Co. KG	Fristablauf
5344	Nomad Foods Europe Limited; LEDO plus d.o.o.; Industrija smrznute hrane Frikom doo Beograd; LEDO d.o.o. Čitluk; IRIDA d.o.o; LEDO Jégkrém és Fagyasztott Élelmiszer Gyártó és Forgalmazó Korlátolt Felelősségű Társaság; Ledo, podjetje za trgovino s sladoledo	Fristablauf
5345	One Equity Partners VI, L.P.; attune Lanka (Private) Limited	Fristablauf
5346	OEP Capital Advisors, L.P.; Cicor AG	Fristablauf
5347	MEGGLE Group GmbH; Stegmann Emmentaler Käse-reien GmbH	Fristablauf
5348	Goldman Sachs Group, Inc.; Aragen Life Sciences Private Limited	Fristablauf
5349	DuPont de Nemours, Inc.; Laird Limited	Fristablauf
5350	HgCapital LLP; Trackunit ApS	Fristablauf
5351	Atlantis B.V.; Andus Group B.V	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5352	Draslovka Holding a.s.; AnQore B.V; Distributions-JV; Produktions-JV	Fristablauf
5353	Eurazeo SE; Groupe Premium	Fristablauf
5354	Vista Equity Partners Management, LLC; ClassPass Inc	Fristablauf
5355	Remondis Recycling GmbH & Co KG; VERRE GmbH & Co. KG	Fristablauf
5356	Partners Group AG; Healogics, Inc.; The Northwestern Mutual Life Insurance Company; Clayton, Dubilier & Rice, LLC	Prüfungsverzicht
5357	Hilton Grand Vacations Inc.; Diamond Resorts International, Inc.; Apollo Management VIII, L.P	Fristablauf
5358	The Goodyear Tire & Rubber Company; Cooper Tire & Rubber Company,	Fristablauf
5359	KPS Capital Partners, LR USA; Metra Holding SpA	Fristablauf
5360	EasyPark Group AS; PARK NOW Group Holding B.V	Fristablauf
5361	Aesculap AG; SCHÖLLY FIBEROPTIC GmbH	Fristablauf
5362	Kingspan Holding Netherlands BV; LOGSTOR International Holding S.à r.l	Fristablauf
5363	C. Thywissen GmbH; ÖKOIL Alapanyag Előállító és Kereskedelmi Korlátolt Felelősségű	Fristablauf
5364	Thoma Bravo, L.P.; Calypso Group Lux S.C.A. und Calypso Manco S.à.r.l	Fristablauf
5365	capiton Holding GmbH; AXXENCE Gruppe	Fristablauf
5366	TEC The Enabling Company GmbH; BICO Zweirad Marketing GmbH	Fristablauf
5367	Thoma Bravo, L.P.; White Clarke Group Holdings Limited	Fristablauf
5368	Mubadala Investment Company PJSC; Iris EquityCo, S.à.r.l.; Apax Partners LLP (AP)	Fristablauf
5369	Hörmann Digital Beteiligungs GmbH; ORBIS AG	Fristablauf
5370	Rocket Software, Inc.; ASG Everglades Holdings, Inc	Fristablauf
5371	Beiselen GmbH; Raiffeisen Waren-Zentrale Rhein Main eG; Bio Kontor GmbH	Fristablauf
5372	Bridgepoint Group Limited; Turnstone Equityco 1 Limited	Fristablauf
5373	Aurelius Investment Lux DS S.à.r.l.; Panasonic Energy Europe NV; Panasonic Energy Europe Belgium NV; Panasonic Energy Poland S.A.	Fristablauf
5374	Aurelius Development Thirty-One GmbH; Hüppe GmbH	Fristablauf
5375	erdgas schwaben gmbh; MAXENERGY GmbH; MAXENERGY Austria Handels GmbH	Fristablauf
5376	MTI Beteiligungen GmbH; INOS 20-036	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5377	BauKing GmbH; Bauwaren Mahler GmbH & Co. KG Bayerische Bauwaren; Mahler Bayerische Bauwaren GmbH; Mahler Fliesen- und Glasbau GmbH; Hillari Fliesen-Center GmbH	Fristablauf
5378	Solmax Netherlands B.V.; TenCate Geosynthetics Holding B.V.	Fristablauf
5379	Platinum Equity, LLC; Club Car, LLC	Fristablauf
5380	Spartronics LLC; Primus Technologies Corp.	Fristablauf
5381	The Paragon Fund III GmbH & Co. geschlossene Investment KG; Sovendus GmbH	Fristablauf
5382	Milchtrocknung Südhannover eG; Uelzena-Gruppe; DMK-Gruppe	Fristablauf
5383	Lanxess AG; EPM Polymer Additives Holding Corp	Fristablauf
5384	IoT Financing Services LLC; TRUMPF GmbH + Co. KG	Fristablauf
5385	Oerlikon Textile Holding AG, Pfäffikon; INglass S.p.A	Fristablauf
5386	Energetický a průmyslový holding a.s.; STEAG Power Minerals GmbH	Fristablauf
5387	Raiffeisen Ware Austria Handel; Vermögensverwaltung eGen; Raiffeisen Agrar Invest AG	Fristablauf
5388	Hillhouse Capital Management, Ltd.; Philips Domestic Appliances Holding B.V	Fristablauf
5389	DPE Investment Gesellschaft mbH; Engelmann Beteili- gungs GmbH	Fristablauf
5390	Sika AG; Yokohama Rubber Co. Ltd	Fristablauf
5391	Unilever PLC; Onnit Labs	Fristablauf
5392	Unimarkt Gruppe GmbH; Kiennast Holding GmbH	Fristablauf
5393	De'Longhi Industrial S.A.; La Marzocco International, L.L.C	Fristablauf
5394	Panasonic Corporation; Blue Yonder Holding, Inc	Fristablauf
5395	Baker Hughes Holdings LLC; Akastor ASA	Fristablauf
5396	Thoma Bravo, L.P.; PDFTron Holdings Inc	Fristablauf
5397	Crédit Agricole S.A.; Unibail-Rodamco Invest GmbH; Unibail-Rodamco-Westfield S.E	Fristablauf
5398	Avantor, Inc.; Ritter GmbH	Fristablauf
5399	Azelis Americas, LLC; Vigon International, Inc	Fristablauf
5400	KPS Capital Partners, LP; Siderforgerossi Group S.p.A.; Immobiliare San Giorgio Sr.l.	Fristablauf
5401	Apollo Management, L.P.; ABC Technologies Holdings Inc.	Fristablauf
5402	KARNERTA GmbH; Bäuerliche Vermarktung Kärntner Fleisch registrierte Genossenschaft mit beschränkter Haftung; BVK Fleisch GmbH	Fristablauf
5403	ADOMO Beteiligungs GmbH; IMMO CONTRACT Gruppe	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5404	Fritsch BeteiligungsgmbH; Maxgi BVBA; Benchmark Beratungsgesellschaft für Unternehmensorganisation mbH; Rittinghaus Beratungs- und Beteiligungsgesellschaft mbH; SPAR Österreichische Warenhandels-Aktiengesellschaft	Fristablauf
5405	Equistone Partners Europe Limited; TIMETOACT Software & Consulting GmbH	Fristablauf
5406	Leonardo S.p.a.; HENSOLDT AG; Square Lux Holding II S.à.r.l	Fristablauf
5407	GIMV NV; sofaturator GmbH	Fristablauf
5408	SPIE Deutschland & Zentraleuropa GmbH; K.E.M. Montage GmbH	Fristablauf
5409	Saudi Arabian Industrial Investments Company; Broad Peak Diamond SLP LP; Asia Green Fund Management Limited; DuPont Clean Technologies	Fristablauf
5410	Trief Corporation S.A.; Tarkett S.A.; Société Investissement Deconinck	Fristablauf
5411	The Blackstone Group Inc.; eOne Music von Hasbro	Fristablauf
5412	Telemos Capital; Mammuth Sports Group AG; Mammuth Sports Group GmbH	Fristablauf
5413	EQT Fund Management S.à r.l.; Secna Natural Ingredients Group, S.L	Fristablauf
5414	ALSO Holding AG; PIN Computers d.o.o. Novi Sad	Fristablauf
5415	Adient plc; Chongqing Yanfeng Adient Automotive Components Co., Ltd	Fristablauf
5416	Mutares SE & Co. KgaA; Magna Exteriors Systems GmbH	Fristablauf
5417	Lappkabel S.r.l.; KU Distribution S.r.l.; UNIKA S.p.A	Fristablauf
5418	International Business Machines Corporation; Turbonomic, Inc	Fristablauf
5419	Borg Automotive AS; SBS Automotive AS	Fristablauf
5420	eBay Inc.; Adevinta ASA	Zusagen in Phase I
5421	Adevinta ASA; ebay Classifieds Group	Zusagen in Phase I
5422	Ingka Holding B.V.; Ikano Bank AB (publ)	Fristablauf
5423	Naxicap Partners; myStromer AG	Fristablauf
5424	LLG AS; Sofaco Holding ApS	Fristablauf
5425	Eurazeo SE; Aroma Zone Group	Fristablauf
5426	Boston Scientific Corporation; Lumenis Ltd	Fristablauf
5427	Premiumsport-Service GmbH; INTERCONTACT Österreich GmbH	Fristablauf
5428	Platinum Equity Advisors, LLC; Gonzales Park, LLC DBA Fifth Sun	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5429	Frulact Gruppe; Vermögenswerte die mit dem Fruchtzubereitungsgeschäft der Frutarom Gruppe	Fristablauf
5430	Twilio; Syniverse Corporation	Fristablauf
5431	valantic GmbH; proTask IT-Management GmbH	Fristablauf
5432	Venetiko Holdings Single Member S.A.; SIF Holdings Limited; SI Foods Limited	Fristablauf
5433	FMC Beteiligungs KG; Dradura Holding GmbH & Co. KG	Fristablauf
5434	GMS Gourment GmbH; Gerstner Catering Betriebs GmbH	Fristablauf
5435	Warburg Pincus LLC; Sundance Group Holdings, Inc.; Cove Hill Partners, LP	Fristablauf
5436	Yanfeng Automotive Trim Systems Company Ltd.; Yanfeng Adient Seating Co., Ltd	Fristablauf
5437	Apollo Management, L.P.; Knighthead Capital Management; Hertz Global Holdings Inc	Fristablauf
5438	Vista Equity Partners Management, LLC; Cloud Guru Group, Inc	Fristablauf
5439	Caverion Österreich GmbH; GTS Immobilien GmbH; GTS Automation GmbH	Zurückziehung
5440	Immofinanz AG; S IMMO AG	Zurückziehung
5441	Trinity Investments Designated Activity Company; Condor Luftfahrt GmbH	Fristablauf
5442	SPL Tele Group GmbH; EnerCharge GmbH	Fristablauf
5443	CLT-UFA S.A.; RTL Disney Fernsehen GmbH & Co. KG, Deutschland	Prüfungsverzicht
5444	BAI Invest GmbH & Co KG; MAP-WSV Beteiligungen GmbH; Soleta Beteiligungsverwaltungs GmbH; Glamas Beteiligungsverwaltungs GmbH & Co Beta KG; LiSciV Muthgasse GmbH & Co KG	Fristablauf
5445	Clearlake Capital Group, L.P.; STG Partners LLC; RSA Security LLC	Fristablauf
5446	Reisewelt GmbH; Blaguss Touristik GmbH	Fristablauf
5447	Clayton Dubilier & Rice, LLC; UDG Healthcare plc	Fristablauf
5448	The Blackstone Group Inc.; Walker Edison Furniture Company LLC	Fristablauf
5449	Siemens AG; Supplyframe, Inc	Fristablauf
5450	BNP Paribas Fortis Private Equity Belgium NV; New-KON NV	Fristablauf
5451	Naxicap Partners, SA; Ondura Holding SAS	Fristablauf
5452	DPE Investment Gesellschaft mbH; ENEXIO Service GmbH	Fristablauf
5453	Colfax Corporation; Mathys AG	Fristablauf
5454	OverDrive Holdings, Inc.; Intermediate, Inc	Fristablauf
5455	Platinum Equity, LLC; SVP-Singer Holdings Inc	Fristablauf
5456	Accor S.A.; Ennismore Holdings Limited	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5457	SCUR-Alpha 1318 GmbH; think-cell Software GmbH	Fristablauf
5458	Flora Bidco GmbH; Compo Gruppe	Fristablauf
5459	Fosun International Limited; Sergio Rossi S.p.A	Fristablauf
5460	Clearlake Capital Group, L.P.; BeyondTrust Software, Inc	Fristablauf
5461	Kohlspitz Holding AG; Quint Holding B.V	Fristablauf
5462	Axel Springer All Media GmbH; SoD ScreenOnDemand GmbH; Xingu Advertising GmbH; cmmrcl.ly GmbH	Fristablauf
5463	Bain Capital Investors, LLC; Crosspoint Capital I GP, LLC; ExtraHop Networks, Inc	Fristablauf
5464	Apollo Management, L.P.,; Verizon Media Group	Fristablauf
5465	VIVATIS Capital Invest GmbH; SDN Beteiligungs GmbH	Fristablauf
5466	PG Vierte VV GmbH; FUNKE Mediengruppe	Fristablauf
5467	VERBUND Energy4Business GmbH; SMATRICS GmbH & Co KG	Fristablauf
5468	Signa International Sports Holding; Wiggle-CRC-Group	Fristablauf
5469	Zwilling J.A. Henckels AG; Santos Grills GmbH	Fristablauf
5470	Nexi S.p.A.; SIA S.p.A.; CDP Equity S.p.A.; Cassa Deposite Prestiti S.p.A	Fristablauf
5471	Raiffeisen Continuum GmbH & Co KG; HAP Industrie Invest GmbH; Wagner Sicherheit GmbH	Fristablauf
5472	Force BidCo AS; Fairwind AS	Fristablauf
5473	Al Xenon New Sponsor LP; Assembly Holdco LP	Fristablauf
5474	Conopco Inc.; Paula's Choice Inc	Fristablauf
5475	HH Global Limited; Adare International Limited	Fristablauf
5476	Pemberton Capital Advisors LLP; Permira Group; DHI Lux S.A.S	Fristablauf
5477	General Electric Company; AerCap Holdings N.V; GE Capital Aviation Services business	Fristablauf
5478	Bach Holdings S.à.r.l.; Business Integration Partners S.p.A	Fristablauf
5479	UBM Development Österreich GmbH; NHD New Home Development Immobilien GmbH; Portunus Gruppe	Fristablauf
5480	MAN Truck & Bus Österreich GesmbH; WSA Beteiligungs GmbH; ASW Beteiligungsverwaltungs GmbH	Fristablauf
5481	Energie Steiermark AG; easy green energy GmbH & Co KG	Fristablauf
5482	Saarstahl; Liberty Rail Hayange SAS; Liberty Ascoval SAS	Prüfungsverzicht
5483	INOS 21-008 GmbH; RLM Münster GmbH	Fristablauf
5484	H.I.G. Colors Inc.; Bushy Park	Fristablauf
5485	Novo Holdings A/S; BBI Group HoldCo Limited	Fristablauf
5486	Oaktree Capital Group, LLC; Mayr-Melnhof Eerbeek B.V.; Baiersbronn Frischfaser Karton GmbH	Fristablauf
5487	Zeitfracht GmbH & Co. KGaA; Adler Modemärkte AG	Prüfungsverzicht

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5488	Airbus Helicopters Deutschland GmbH; ZF Luftfahrt-technik GmbH	Fristablauf
5489	LLT- Lannacher Lager- und Transport GmbH; Cross Cargo Logistics G.m.b.H	Fristablauf
5490	Apollo Management, L.P., USA; Alpine Investors Ingenio CV, LP	Fristablauf
5491	Trioworld Industrier AB; Flexoplast B.V	Fristablauf
5492	EFESO Consulting France SAS; Czipin Produktivitätssteigerungs-GmbH	Fristablauf
5493	Platinum Equity, LLC; McGraw-Hill Education, Inc	Fristablauf
5494	Eurazeo SE; Novair SAS	Fristablauf
5495	Blackstone Life Sciences Advisors LLC; GEMoab GmbH; Intellia Therapeutics Inc	Fristablauf
5496	Apollo Management, L.P.; Spoonflower Inc	Fristablauf
5497	Eurazeo SE; Committed Advisors SAS; Arena Gruppe; Hessnatur Gruppe; Kaffee Partner Gruppe	Fristablauf
5498	EP Corporate Group, a.s.; MFresh Holding 1 s.r.o	Fristablauf
5499	The Blackstone Group Inc.; International Data Group Inc	Fristablauf
5500	CETP IV Investment 9 S.à r.l.; AGILOX Systems GmbH	Fristablauf
5501	Die Würth - Gruppe; CICMP Vertriebs-GmbH	Fristablauf
5502	Charterhouse Capital Partners LLP; Labelium International S.A.S	Prüfungsverzicht
5503	Boston Scientific Corporation; Farapulse Inc	Fristablauf
5504	teamtechnik Maschinen und Anlagen GmbH; Hekuma GmbH	Fristablauf
5505	Wisag Airport Service Aveco; Melo Group	Fristablauf
5506	Accenture plc.; Trivadis Partner AG	Fristablauf
5507	„UNSER LAGERHAUS“ Warenhandelsgesellschaft m.b.H.; Einkaufszentrum Sabitzer GmbH	Fristablauf
5508	Altor Fund Manager AB; Multi-Wing Group AS	Fristablauf
5509	Rhône Capital L.L.C.; Wahoo Fitness, LLC	Fristablauf
5510	Co-Investor Blocker, LLC; The Blackstone Group Inc.; Hellman & Friedman LLC; Medline Industries, Inc	Fristablauf
5511	Thoma Bravo, L.P.; Proofpoint, Inc	Fristablauf
5512	VKR Holding A/S; Dovista A/S; Weru Gruppe	Fristablauf
5513	AV Holding International GmbH; AVAG Holding SE; Eisner GmbH	Fristablauf
5514	Coca-Cola HBC AG; Casa del Caffè Vergnano S.p.A	Fristablauf
5515	Providence Equity Partners LLC; Sweetwater Sound Inc	Fristablauf
5516	Compagnie de Saint-Gobain S.A.; Starcin Group	Fristablauf
5517	Primepulse SE; Cenit AG	Prüfungsverzicht
5518	Sandvik AB; Cambrio	Fristablauf
5519	Financière Verdi I SAS; Altan Pharma Limited	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5520	FSN Capital-Fonds; Sanitärgruppe Stiller GmbH	Fristablauf
5521	Sebia S.A.; WSHP Intermediate Holding Sarl; ORGEN-TEC Diagnostika GmbH	Fristablauf
5522	EDCO Eindhoven Holding B.V. ; Gilde Fund VI; Gilde Buy-Out Partners B.V. ; Monceau Deelnemingen I B.V	Fristablauf
5523	SK Capital Investments V, Ltd.; Colorants International AG; Colorants Solutions USA LLC; Heubach Holding GmbH	Fristablauf
5524	Invest Unternehmensbeteiligungs Aktiengesellschaft; ALUK-Privatstiftung; Kapsch BusinessCom AG	Fristablauf
5525	capiton VI GmbH & Co. Beteiligungs KG; Kutterer Mauer AG	Fristablauf
5526	Marubeni Corporation; Spice Holding B.V	Fristablauf
5527	Brembo S.p.A.; J.Juan Gruppe	Fristablauf
5528	Thoma Bravo, L.P.; QAD Inc	Fristablauf
5529	Care Participations Bidco SAS; JIC Firmiana SAS	Fristablauf
5530	BASF SE; Vattenfall Hollandse Kust Zuid 1&2 C.V.; Vattenfall Hollandse Kust Zuid 3&4 C.V	Zurückziehung
5531	MDR Media GmbH; TELLUX-Beteiligungsgesellschaft mbH; MotionWorks GmbH	Fristablauf
5532	Mutares SE & Co.; Ganter Construction & Interiors GmbH	Fristablauf
5533	Voxx International Corporation; Premium Audio Company, LLC; NewCo; Sharp Corporation	Fristablauf
5534	Platinum Equity, LLC; Unical Group	Fristablauf
5535	Lindberg Gruppe; Kering Gruppe; Richemont Gruppe	Fristablauf
5536	Vivendi SE; Lagardère SA	Fristablauf
5537	Kollitsch Immobilien GmbH; PORR Bau GmbH	Fristablauf
5538	WPEF VIII Holdco 1 B.V. ; The Cookware Company Ltd	Fristablauf
5539	H.I.G. Middle Market LBO Fund III, L.P.; Oxford Global Resources, LLC	Fristablauf
5540	BDT Capital Partners, LLC; Transtech Glass Investment Ltd	Fristablauf
5541	Mediaocean LLC; Flash Topco Limited	Fristablauf
5542	Hexagon AB; die Vermögenswerte betreffend des derzeitigen Enterprise Asset Management Geschäfts von Infor (US); LLC. (USA)	Fristablauf
5543	Gilde Specialty Chemicals B.V.; Innotec Holding N.V	Fristablauf
5544	MB Beteiligungs GmbH; Loges GmbH & Co. KG	Fristablauf
5545	Unifrax Holding Co.; Lydall, Inc	Fristablauf
5546	Interpump Group S.p.A.; White Drive Motors and Steering LLC	Fristablauf
5547	HAL Investments B.V.; CaseGi Holding GmbH	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5548	ICG Europe Fund VIII Investment S.à.r.l.; Iver Holding AB	Fristablauf
5549	Facebook Inc.; Giphy Inc	Phase II (Prüfungsantrag gestellt)
5550	Axalta Coating Systems UK Holding Limited; U-POL Holdings Limited	Fristablauf
5551	Accenture plc; Wabion GmbH; Wabion AG	Fristablauf
5552	LAWOG; GVVG; OGW	Fristablauf
5553	Saubermacher Dienstleistungs AG; Gassner Entsorgung und Umweltservice GmbH	Fristablauf
5554	Azelis France Holding SAS; Quimdis SAS	Fristablauf
5555	Nest Bidco Inc.; Balcones Holdco, Inc	Fristablauf
5556	Sun Capital Partners Inc.; SLG Invest N.V	Fristablauf
5557	Questel Germany Holding GmbH; Questel SAS; Brandstock Services AG; Brandstock IP Solutions GmbH	Fristablauf
5558	emdequity GmbH; B.H. Holding GmbH; BIG Invest Holding GmbH; FEINIKO Handelsgesellschaft mbH	Fristablauf
5559	The Blackstone Group Inc.; Sphera Solutions Inc	Fristablauf
5560	Gilde Equity Management (GEM) Benelux Fund IV Coöperatief U.A.; Storage Group B.V.; Bruynzell Storage Group B.V	Fristablauf
5561	BC Partners LLP; Tentamus Group GmbH	Fristablauf
5562	ADCURAM Korte Holding GmbH; Korte Einrichtungen GmbH	Fristablauf
5563	Celanese Corporation; Advanced Elastomer Systems Limited	Fristablauf
5564	Pappas Holding GmbH; Rack Autó Kft	Fristablauf
5565	LVMH Moët Hennessy Louis Vuitton Inc.; Virgil Abloh Trust; Off-White LLC	Fristablauf
5566	Hewlett Packard Enterprise Company; Zerto Ltd	Fristablauf
5567	Sandvik AB; DW Fritz Automation, Inc	Fristablauf
5568	Syngenta AG; Verisem B.V	Fristablauf
5569	Dexis Germany GmbH & Co. KG; Bühning & Joswig	Fristablauf
5570	Dione Bidco Limited; Lloyd's Register EMEA	Fristablauf
5571	Proxima Beta Europe B.V.; Crytek GmbH	Fristablauf
5572	TE Connectivity Ltd.; Tyco Electronics (Schweiz) Holding II GmbH; Erni Group AG	Fristablauf
5573	CETP IV Investment 9 S.à r.l.; Vital Topco Limited; LiveU Ltd	Fristablauf
5574	capiton VI GmbH & Co. Beteiligungs GmbH; Stürtz Holding GmbH	Fristablauf
5575	Proxima Beta Europe B.V.; 1C Entertainment Spółka Akcyjna	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5576	illwerke vkw AG; DOMA Energietechnik GmbH; Ernst Schweizer AG	Fristablauf
5577	Philip Morris International Inc.; Fertin Pharma A/S	Fristablauf
5578	Thoma Bravo, L.P.; Stamps.com Inc	Fristablauf
5579	Danaher Corporation; Aldevron, L.L.C	Fristablauf
5580	Bregal Group; Laird Thermal Systems Group	Fristablauf
5581	Altor Fund Manager AB; Auster Capital Ltd.; Rise Up Fashion GmbH (Oceansapart)	Fristablauf
5582	Cerba Gruppe; Lifebrain Gruppe	Fristablauf
5583	Legrand S.A.; Ensto Building Systems Oy	Fristablauf
5584	Gauselmann Spielbanken Beteiligungs GmbH; NRW Bank Anstalt des öffentlichen Rechts; Westdeutsche Spielbanken GmbH	Fristablauf
5585	Olympia-Verlag GmbH; E-Quadrat communications GmbH	Fristablauf
5586	PAI Partners SAS; ECG Holding SAS	Fristablauf
5587	Glencore plc; Carbones del Cerrejon Limited	Fristablauf
5588	Apollo Management, L.P; Grupo Aeromexico, S.A.B. DE C.V	Fristablauf
5589	CNH Industrial N.V.; Raven Industries, Inc	Fristablauf
5590	bank99 AG; ING-DiBa AG	Fristablauf
5591	Sephora SAS; Feelunique Holding Limited	Fristablauf
5592	Signa At 2020 Drei GmbH; ada Learning GmbH	Fristablauf
5593	Sonova AG; Sennheiser Consumer Audio GmbH	Fristablauf
5594	Triton V LuxCo 63 SARL; Swiss IT Security Holding AG; Swiss IT Security Group AG	Fristablauf
5595	3i Group plc; Blitz 21-897 GmbH; MAIT GmbH	Fristablauf
5596	IREKS GmbH; MOLINO MERANO Srl	Fristablauf
5597	Kruse Beteiligungsgesellschaft mbH & Co Kommanditgesellschaft; Wittrock Holding GmbH & Co. KG; IGEFA Holding SE & Co. KG	Fristablauf
5598	Swarco; Eisenschutzgesellschaft	Fristablauf
5599	MKS Instruments, Inc.; Atotech Limited	Fristablauf
5600	Electronic Arts Inc.; Playdemic Limited	Fristablauf
5601	AL-KO Vehicle Technology Group GmbH; Brink International B.V	Fristablauf
5602	Embracer Group AB; CrazyLabs Ltd	Fristablauf
5603	Herren Thomas Hörmann, Martin Hörmann und Christoph Hörmann co Hörmann KG Verkaufsgesellschaft; Lebo GmbH mit Sitz in Bocholt und Lebo (Krakow am See) GmbH mit Sitz in Krakow am See	Fristablauf
5604	AGROFERT, a.s; AGRONOM d.o.o	Fristablauf
5605	Thoma Bravo L.P.; Medallia, Inc	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5606	PerkinElmer; BioLegend Inc	Fristablauf
5607	Medienholding Klambt GmbH & Co. KG; MZV Moderner Zeitschriften-Vertrieb GmbH & Co. Kommanditgesellschaft; MZV Export-Import Zeitschriften-Vertrieb GmbH & Co. Kommanditgesellschaft	Fristablauf
5608	aptus 1819. GmbH; YT Industries GmbH	Fristablauf
5609	Comer Industries S.p.A.; WPG Holdco B.V.; WPG Parent B.V	Fristablauf
5610	FMC Beteiligungs KG; thyssenkrupp Infrastructure GmbH	Fristablauf
5611	Worldline N.V./S.A.; Axepta S.p.A	Fristablauf
5612	Platinum Equity, LLC; OT Intermediate Holding II Corporation; ASP Blade Holdings, Inc.; Oregon Tool, Inc	Fristablauf
5613	Canal+ Luxembourg S.à r.l.; wesentliche Teile der A1now TV GmbH, die A1now TV betreffen	Fristablauf
5614	Smurfit Kappa Italia S.p.A.; Cartiera di Verzuolo S.r.l	Fristablauf
5615	KPS Capital Partners, LP; Tate & Lyle PLC	Fristablauf
5616	Platinum Equity, LLC; Fetch Topco LLC	Fristablauf
5617	Walki Group OY; Rollpack S.A.S	Fristablauf
5618	BidSky S.A.S.; Artefact S.A	Fristablauf
5619	GMB Systems GmbH & Co. KG, Verimi GmbH	Fristablauf
5620	Mutares SE & Co. KGaA; Innomotive Systems Hainichen GmbH	Fristablauf
5621	Penguin Random House Verlagsgruppe GmbH; frech-verlag GmbH	Fristablauf
5622	STG Alternative Investments SCA SICAV-RAIF -Sub-Fund E; Avizor Internacional, S.L.; Avizor Inversiones, S.L.; Visionwings, S.L	Fristablauf
5623	MTS Milchtrocknung Südhannover eG; Biolac GmbH & Co. KG; Biolac Verwaltungsgesellschaft mbH	Fristablauf
5624	VERBUND Energy4Business GmbH; SMATRICS GmbH & Co KG; E-Mobility Provider Austria GmbH	Fristablauf
5625	Alster BidCo; Engel & Völkers AG; TechRock Platform for Data Intelligence and Technology AG	Fristablauf
5626	SAP SE; Clarabridge, Inc	Fristablauf
5627	Alpha Holding GmbH; Wolf Plastics Verpackungen GmbH	Fristablauf
5628	AXA Master Partners in Infrastructure Equity 1 SA; Aragon Holding JV S.à.r.l	Fristablauf
5629	Linma GmbH; Baumeister-Familie; BOS GmbH & Co. KG; BOS Verwaltungsgesellschaft mbH	Fristablauf
5630	Clearlake Capital Group L.P.; Cornerstone on Demand, Inc	Fristablauf
5631	REMONDIS SE & Co. KG; Meidlinger Gerüstbau GmbH	Fristablauf
5632	One Equity Partners VIII, L.P.; USNR LLC	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5633	Sandvik AB; CNC Software, Inc	Fristablauf
5634	Atos Medical AB; TRACOE medical GmbH; XTR Holding Ltd	Fristablauf
5635	Partners Group AG; Pharmathen Global Holding B.V	Fristablauf
5636	Insight Holdings Group, LLC; PSPDFKit GmbH	Fristablauf
5637	Axel Springer SE; Politico LLC	Fristablauf
5638	Bridgepoint Advisers II Limited, in seiner Funktion als Manager für und im Namen der Kommanditgesellschaften, die den BDC IV Fund bilden; CC Lingo Invest ApS; LanguageWire Holding A/S	Fristablauf
5639	All for One Group SE; SNP Schneider-Neureither & Partner SE; SNP Poland Sp. z.o.o	Fristablauf
5640	Arbeitsgemeinschaft TELETETEST (AGTT); TV-Insight; Red Bull GmbH	Fristablauf
5641	TA Associates Cayman, Ltd.; Smiths Medical 2020 Limited	Fristablauf
5642	Bajaj-Gruppe; Pierer-Gruppe	Fristablauf
5643	bikes&wheels 2 Radhandels GmbH; Funbike GmbH	Fristablauf
5644	MIH Food Holdings B.V.; Delivery Hero SE,	Fristablauf
5645	One Equity Partners VIII L.P.; Wood Fiber Holdings, Inc	Fristablauf
5646	Autonet Import S.R.L.; Inter Cars S.A.; PARTSLIFE International Kft	Fristablauf
5647	SPIE S.A.; DÜRR Group GmbH	Fristablauf
5648	Archer Daniels Midland Europe B.V.; Victoria Group D.O.O	Fristablauf
5649	STEAG Walsum 10 Kraftwerksbeteiligungsgesellschaft mbH; STEAG-EVN Walsum 10 Kraftwerksgesellschaft mbH	Prüfungsverzicht
5650	METRO Cash & Carry Österreich GmbH; C & C Abholgroßmärkte Gesellschaft m.b.H	Phase II (Prüfungsantrag gestellt)
5651	P8 Holding 1 S.à r.l.; Makto S.à.r.l.; Apax Partners SAS	Fristablauf
5652	DBAG Fund VIII; Dantherm Group A/S	Fristablauf
5653	PAI Partners S.à r.l.; Scrigno S.p.A	Fristablauf
5654	INOS 21-019 GmbH; KONGAARD AG	Fristablauf
5655	Dr. Axel Schweitzer; ALBA Group; Encory GmbH	Fristablauf
5656	Platinum Equity, LLC; Achieve3000, Inc	Fristablauf
5657	Equistone Partners Europe SAS; Conquest Corp, SGPS, S.A	Fristablauf
5658	CVC Capital Partners SICAV-FIS S.A.; Poseidon Holding, LLC	Fristablauf
5659	Quva S.à.r.l.; ConDoor Holding B.V	Fristablauf
5660	Cascade Corporation; Lift-Tek Elecar S.p.a.,	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5661	Invest Unternehmensbeteiligungs Aktiengesellschaft; DBC-Gruppe	Fristablauf
5662	BAWAG P.S.K.; Hello bank!	Fristablauf
5663	North Star LuxCo S.à r.l.; Financial Automation Holding GmbH	Fristablauf
5664	Raja S.A.S.; ODE Holding B.V	Fristablauf
5665	Authentic Brands Group LLC; Marke Reebok.V	Fristablauf
5666	Valmet Oyj; Neles Oyj	Zurückziehung
5667	DER Touristik Hotels & Resorts GmbH; DR Hospitality GmbH & Co. KG und DR Hospitality Verwaltungsgesellschaft mbH; Deutsche Seereederei GmbH	Fristablauf
5668	Landgenossenschaft Ennstal - Landmarkt KG; F. Altmayer Gesellschaft m.b.H	Fristablauf
5669	PreZero Zweite Verwaltungs-GmbH; KBG Kunststoff Beteiligungen GmbH	Fristablauf
5670	Arkema SA; Klebstoffgeschäfts von Ashland LLC	Fristablauf
5671	Bechtle Systemhaus Holding AG; OPEN NETWORKS GmbH	Fristablauf
5672	Strategic Value Partners, LLC; Southern Graphics, Inc	Fristablauf
5673	ADCURAM BETA Holding GmbH; Fertighaus-Gruppe;	Fristablauf
5674	Alpla Holding GmbH; UPT United Polymer Trading AG; SC Ecohelp SRL	Fristablauf
5675	Vertex Aerospace LLC; Raytheon Technologies Corporation	Fristablauf
5676	Platinum Equity LLC; CosmicPet LLC	Fristablauf
5677	ZECH Bau Austria GmbH; Implenia Baugesellschaft mbH	Fristablauf
5678	Blackstone Inc.; The Chamberlain Group, Inc	Fristablauf
5679	Pernod Ricard S.A.; The Whisky Experience Ltd.; Speciality Drinks Limited; ABV Global Ltd.; Whisky Auction Ltd; Elixir Group Holdings Limited	Fristablauf
5680	iMedia Brands, Inc.; 123tv Invest GmbH	Fristablauf
5681	GS Acquisitionco Inc.; Magnitude Software, Inc	Fristablauf
5682	ArchiMed SAS; Cresbard Invest S.L	Fristablauf
5683	Avantor, Inc.; MasterFlex LLC	Fristablauf
5684	Fidelidade - Companhia de Seguros, S.A.; the prosperity company AG	Fristablauf
5685	Eni S.p.A.; Versalis S.p.A.; Finproject S.p.A	Fristablauf
5686	Exponent Private Equity LLP; Gilde Buy-Out Partners B.V.; Horizon Midco Limited; Pixel Acquisitions B.V	Fristablauf
5687	Roche Holding AG; TIB Molbiol Gruppe	Fristablauf
5688	Cobham Ultra Acquisitions Limited; Ultra Electronics Holdings plc	Fristablauf
5689	888 Holdings plc; William Hill Limited	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5690	PIERER E-Bikes GmbH; MAXCOM LTD	Fristablauf
5691	Gamma Film GmbH; Gebhardt Productions GmbH	Fristablauf
5692	Gamma Film GmbH; TVfriends productions & services GmbH	Fristablauf
5693	Sems CH 2 AG; Arole Holding SA; Conforama Suisse SA	Fristablauf
5694	Oaktree Capital Group, LLC; ABC Technologies Holdings Inc.; Apollo Management, L.P	Fristablauf
5695	Caisse de dépôt et placement du Québec; Monument Re Limited	Fristablauf
5696	CNH Industrial Italia S.p.A.; Sampierana S.p.A	Fristablauf
5697	Silbitz Group Beteiligungs GmbH; Eisengießerei Torge-low GmbH	Fristablauf
5698	SK Tilley Holdings L.P.; Phoenix Aromas & Essential Oils, LLC	Fristablauf
5699	Aldermanbury Investments Limited; Last Mile Delivery S.à r.l.; Robus SCSP, SICAV-FIAR - Robus Recovery Fund II	Fristablauf
5700	Equitix Erasmus Bidco SARL; PPP - Radioonkologie KHR SZO GmbH & Co. KG; PPP - Radioonkologie KHR SZO GmbH	Fristablauf
5701	NACo SAS; Novasep Holding SAS	Fristablauf
5702	Stamps.com Inc.; Packlink Shipping S.L	Fristablauf
5703	Merck & Co., Inc.; Acceleron Pharma, Inc	Fristablauf
5704	Binderholz UK Holding GmbH; West Moorland 101 Limited	Fristablauf
5705	Multi-Color Corporation; Skanem Group	Fristablauf
5706	Sonnleitner Holding GmbH; Renault Nissan Wien Handels- und Reparatur GmbH	Fristablauf
5707	LG Energy Solution, Ltd.; NEC Energy Solutions Inc. (USA)	Fristablauf
5708	Stanley Black & Decker Inc.; MTD Products Inc	Fristablauf
5709	Aurelius Group; Unilux GmbH	Fristablauf
5710	Navy Aggregator LP; AQ Software LLC	Fristablauf
5711	Motel One GmbH; Motel One Austria GmbH	Fristablauf
5712	capiton VI GmbH & Co. Beteiligungs KG; Solvis Holding GmbH	Fristablauf
5713	DT Holding S.p.A.; Gruppo Bertolaso S.p.A	Fristablauf
5714	Equistone Partners Europe Limited; ADM (Group) Limited	Fristablauf
5715	Accenture plc.; Quantiq Group Limited	Fristablauf
5716	AI ICE & Cy S.C.A.; ABC Farmaceutici S.p.A	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5717	Oberösterreichische Gesundheitsholding GmbH; Kepler Universitätsklinikum GmbH; LKV Krankenhaus Errichtungs- und Vermietungs-GmbH	Fristablauf
5718	PORR Mischanlagen GmbH; Weber Holding Tirol GmbH	Fristablauf
5719	Hestia IV S.à r.l.; Elk Group S.à r.l	Fristablauf
5720	Grifols SA; Biotest AG	Fristablauf
5721	PORR Beteiligungen und Management GmbH; hospitals Projektentwicklungsges.m.b.H	Fristablauf
5722	Valida Plus AG; Top Vorsorge Management GmbH	Fristablauf
5723	Autonet Group Holding AG; Augsburg International Impex SRL	Fristablauf
5724	Advent International Corporation; Viking Global Investors LP; Global Processing Services Group Limited	Fristablauf
5725	Tikehau Capital SCA; Egis SA	Fristablauf
5726	Sonepar SAS; Factory Systemes Groupe	Fristablauf
5727	Blackstone Inc.; Kiwi VFS SUB I S.à.r.l	Fristablauf
5728	Salzburg AG für Energie, Verkehr und Kommunikation; Ökovolt Solartechnik GmbH; ÖKOVOOLT GmbH Solartechnik	Fristablauf
5729	Vista Equity Partners Management, LLC; Blue Prism Group plc	Fristablauf
5730	H.I.G. Middle Market LBO Fund III, L.P.; Time Manufacturing Holdings LLC	Fristablauf
5731	Platinum Equity, LLC; Pelican Products, Inc	Fristablauf
5732	SCHWENK Zement GmbH & Co. KG; Mobile Betonkonzepte GmbH	Fristablauf
5733	Compressor Products Group; Granite US Holdings	Fristablauf
5734	Azelis Deutschland GmbH; Neupert Specialities GmbH	Fristablauf
5735	DMK Deutsches Milchkontor GmbH; Fude + Serrahn Vermögensverwaltungsgesellschaft mbH Group	Fristablauf
5736	Magna Automotive Europe GmbH; KLEIN automotive s.r.o	Fristablauf
5737	Intermediate Capital Group plc.; Globoforce Group plc	Fristablauf
5738	Bridgepoint Group Holdings Limited; PTV Planung Transport Verkehr AG	Fristablauf
5739	Emerson Electric Co.; Aspen Technology, Inc	Fristablauf
5740	Münze Österreich Aktiengesellschaft; philoro Group	Fristablauf
5741	Gotion High-Tech Co. Ltd; Robert Bosch Aftermarket Solutions GmbH	Fristablauf
5742	Amadys Germany GmbH; SKG Netzwerktechnik GmbH	Fristablauf
5743	Oaktree Capital Group; PI-SM GmbH	Fristablauf
5744	Boston Scientific Corporation; Baylis Medical Company Inc	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5745	Die Zweite Nagel Real Estate GmbH & Co. KG; B+S GmbH Logistik und Dienstleistungen	Fristablauf
5746	Roanoke Investment Pte Ltd.; CETIN Group N.V	Fristablauf
5747	Pon Holdings B.V.; Dorel Industries Inc	Fristablauf
5748	Arxada AG; Troy Corporation	Fristablauf
5749	GENUI II GmbH & Co. KG; PRIMEPULSE SE; Mindcurv-Gruppe	Fristablauf
5750	Clayton, Dubilier & Rice Fund XI, L.P.; PwC's globales Mobilitätsdienstleistungsgeschäft	Fristablauf
5751	Blackstone Inc.; ABC HoldCo Limited	Fristablauf
5752	Partners Group AG; Orbiter Investments S.à r.l.; CVC Capital Partners SICAV-FIS S.A	Fristablauf
5753	ČEZ, a. s.; BELECTRIC GRUPPE	Fristablauf
5754	Revalize Inc.; PROCAD Holding GmbH	Fristablauf
5755	HYDAC-Unternehmensverbund; Funke Wärmeaus-tauscher Apparatebau Verwaltungs GmbH	Fristablauf
5756	Aurelius Elephant Limited UK; Admenta UK Limited	Fristablauf
5757	Kiwi Holdco CayCo, Ltd; Fondsdepot Bank	Fristablauf
5758	Dawaa'a Restricted Limited; Pharma Strategy Partners GmbH	Fristablauf
5759	Eurazeo SE; Business Agility Midco LLC, USA	Fristablauf
5760	WIEN ENERGIE GmbH; Windpark Group	Fristablauf
5761	Auctus Gruppe; Cruiseadors GmbH; Digitalberatung GmbH; mediaworx berlin AG; Kamano GmbH; klaro Media GmbH EComCon GmbH;	Fristablauf
5762	Bregal Sagemount Group; Conductor Founders Inc	Fristablauf
5763	Apollo Management, L.P., USA; Covis Pharma GmbH; AstraZeneca UK Limited	Fristablauf
5764	IMI plc; Adaptas Acquisition Holding	Fristablauf
5765	3i Group plc; Mepal B.V	Fristablauf
5766	Discovery, Inc.; WarnerMedia, LLC	Fristablauf
5767	General Electric Company; BKM Medical Holding Inc	Fristablauf
5768	Partners Group AG; DiversiTech Corporation	Fristablauf
5769	Apollo Capital Management, L.P.; Riverbed Techno-logy, Inc	Prüfungsverzicht
5770	Booking Holdings Inc.; Getaroom, Inc	Prüfungsverzicht
5771	Die Gründerfamilien von Fluidra, S.A.; Fluidra, S.A	Fristablauf
5772	Invest Unternehmensbeteiligungs AG; Dr. Michael Pachleitner Privatstiftung	Fristablauf
5773	Sandvik Inc.; GWS Tool Intermediate Holdings, LLC	Fristablauf
5774	FCLH Ltd; FCE Bank plc; ALD SA	Fristablauf
5775	Montana Aerospace AG; S.R.I.F. NV (ASCO)	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5776	CONTAINEX Container-Handelsgesellschaft m.b.H.; Limoplast d.o.o	Fristablauf
5777	Dover Corporation; Engineered Controls International, LLC	Fristablauf
5778	BearingPoint Holding B.V.; IGT Holding IV AB	Fristablauf
5779	Karo Pharma Aktiebolag; Sylphar International NV	Fristablauf
5780	American Securities LLC; r-pac Group	Fristablauf
5781	INHAUS Handels GmbH; SST Solar GmbH; EQ-Systems GmbH; A.B. Holding GmbH	Fristablauf
5782	Pfizer, Inc.; exklusive und co-exklusive Lizenzrechte für den Vertrieb, die Entwicklung und die Herstellung bestimmter Wirkstoffe von Biohaven Pharmaceutical Holding Company Ltd. in New Haven, USA zur Behandlung von Migräne	Fristablauf
5783	Meat Acquico Germany GmbH; Produktion & Logistik Grundbesitz GmbH & Co. KG	Fristablauf
5784	Synthomer PLC; alleinige Kontrolle über das Klebstoffgeschäft der Eastman Chemical Company	Fristablauf
5785	IC Immobilien Holding GmbH; HHH Real Estate GmbH; HHH Property Management GmbH	Fristablauf
5786	Vivartia Holdings S.A.; MIHAIL ARAMPATZIS ANONYMI VIOMIHANIKI KAI EMPORIKI	Prüfungsverzicht
5787	DZ BANK AG; Atruvia AG; BMS Corporate Solutions GmbH; FinCompare GmbH	Prüfungsverzicht
5788	Apollo Management, L.P.; Micros Components, Inc	Prüfungsverzicht
5789	Ford Motors Company; SK Inc	Fristablauf
5790	Coloplast A/S; Atos Medical Holding AB	Fristablauf
5791	GRP III HPC Lux S.à r.l.; 55 East 52nd Street	Fristablauf
5792	OneMed Netherlands Holding B.V.; HuCo B.V. Holding Empé B.V	Fristablauf
5793	Clearlake Capital Group, L.P.; Quest Software Inc	Fristablauf
5794	Montagu Private Equity LLP; Horace Holding S.A.S	Fristablauf
5795	Philia HoldCo Coöperatief U.A.; Gilde Buy-Out Fund VI C.V.; Gilde Buy-Out Partners B.V.; WinIT Holding GmbH; WinIT Co-Invest GmbH & Co. KG; Emeram Capital Partners GmbH	Fristablauf
5796	RealBestand Immobilien GmbH & Co KG; RBG Holding GmbH; Raiffeisenbank Steyr eGen; Raiffeisenbank Inneres Salzkammergut eGen; Raiffeisenbank Region Ried i.l. eGen; Raiffeisen Region Pregarten eGen	Fristablauf
5797	Caisse de dépôt et placement du Québec; Qima Limited	Fristablauf
5798	smartclip Europe GmbH; Amobee EMEA Ltd	Fristablauf
5799	Deere & Company; Kreisel Electric GmbH & Co KG	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5800	Recordati Industria Chimica e Farmaceutica S.P.A.; EUSA Pharma (UK) Limited	Fristablauf
5801	The Paragon Fund III GmbH & Co. geschlossene Investment KG; KME Special Products GmbH & Co. KG	Fristablauf
5802	YOUSURE Tarifvergleich GmbH; Broker Bidco Acquisitions Kft.; TA Associates Management, L.P	Fristablauf
5803	Mayr-Melnhof Holz Leoben GmbH; Dilasso Holding 2 S.a.r.l	Fristablauf
5804	Volkswagen Pension Trust e.V.; Reserved Alternative Investment Fund; Allianz European Infra-structure Fund II SCSp	Fristablauf
5805	capiton V GmbH & Co. Beteiligungs KG; Vitafy GmbH	Fristablauf
5806	capiton VI GmbH & Co. Beteiligungs KG; Betonbau Holding GmbH	Fristablauf
5807	Goldman Sachs Asset Management, L.P., co The Corporation Trust Company, Corporation Trust Center	Fristablauf
5808	Allianz Renewable Energy Partners Luxembourg VI S.A.; BASF SE	Zurückziehung
5809	EnBW mobility+ AG & Co. KG; SMATRICS GmbH & Co KG; E-Mobility Provider Austria GmbH	Fristablauf
5810	Invest Unternehmensbeteiligungs Aktiengesellschaft; Trifolia Management GmbH; Herba Chemosan Apotheker AG	Fristablauf
5811	Merkur Versicherung Aktiengesellschaft; NÜRNBERGER Versicherung Aktiengesellschaft Österreich	Fristablauf
5812	Dermapharm Holding SE; C3 – Cannabinoid Compound Company GmbH	Fristablauf
5813	Volkswagen Pension Trust e.V.; Reserved Alternative Investment Fund; Allianz Global Diversified Infrastructure Equity Fund II SCSp	Fristablauf
5814	CPI Property Group SA; Immofinanz AG	Fristablauf
5815	AVS Group GmbH; HTH Vier GmbH	Fristablauf
5816	GENUI II GmbH & Co. KG; PRIMEPULSE; Mindcurv-Gruppe; eccelerate GmbH; Valearis GmbH	Fristablauf
5817	OEP Lscape Coöperatief U.A.; Norit Americas Holding Inc	Fristablauf
5818	IMCD South East Europe GmbH; Polychem Handelsgesellschaft m.b. H	Fristablauf
5819	Aristocrat Leisure Limited; Playtech plc	Fristablauf
5820	Carl Zeiss IQR GmbH; Siemens Energy Global GmbH & Co. KG	Fristablauf
5821	AUTKAP Privatstiftung; Invest Unternehmensbeteiligungs Aktiengesellschaft; Rumlpl GmbH	Fristablauf
5822	Triley Bidco Limited; Clinigen Group plc	Fristablauf

Fusionsstatistik 2021		
Fall	Unternehmen	Status
5823	NewCo; Scientific Games Corporation – Lottery	Fristablauf
5824	Integrated Dynamics Engineering GmbH; isel Germany AG	Fristablauf
5825	ZDF Enterprises GmbH; Real Film Berlin GmbH	Fristablauf
5826	ProduGi AcquiCo SA; Gilde Buy-Out Fund VI C.V.; Gilde Buy-Out Partners B.V.; MBK Fincom Holding SA	Fristablauf
5827	BKW Engineering AG; Geotechnik Tauchmann GmbH	Fristablauf
5828	ARApplus GmbH; Saubermacher Dienstleistungs-Aktiengesellschaft; digi-Cycle GmbH	Fristablauf
5829	Rhomberger Bau Holding GmbH; BPS Investment GmbH	Fristablauf
5830	Westlake Chemical Corporation; Hexion Coatings and Composites (US) Inc	Fristablauf
5831	Santos Grills GmbH; Grill Heaven GmbH	Fristablauf
5832	ADOMO Beteiligungs GmbH; Universal Gebäudereinigung Gesellschaft m.b.H	Fristablauf
5833	S IMMO AG; CEE Immobilien GmbH; IMMOFINANZ AG	Fristablauf
5834	Crown Bidco B.V.; Otto Cosmetic GmbH	Fristablauf
5835	ADOMO Beteiligungs GmbH; DUO Holding GmbH	Fristablauf

7.4 List of abbreviations

Abkürzungsverzeichnis	
Abs	Absatz
AEUV	Vertrag über die Arbeitsweise der Europäischen Union
AG	Aktiengesellschaft, Antragsgegner(in)
AI	Artificial Intelligence
AK	Arbeiterkammer
API	Application Programming Interface
Art	Artikel
AWG	Abfallwirtschaftsgesetz 2002
BAK	Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung
BFG	Bundesfinanzgesetz
BGBI	Bundesgesetzblatt
BKartAnw	Bundeskartellanwalt
BMDW	Bundesministerium für Digitalisierung, und Wirtschaftsstandort
BMF	Bundesministerium für Finanzen
BMJ	Bundesministerium für Justiz
BP	Bundespräsident
Bsp/bspw	Beispiel/beispielsweise
BWB	Bundeswettbewerbsbehörde (Federal Competition Authority)
BVwG	Bundesverwaltungsgericht
bzw.	beziehungsweise
C2C	consumer-to-consumer
ca	circa
Co KG	Compagnie Kommanditgesellschaft
Co KGaA	Compagnie Kommanditgesellschaft auf Aktien
CO ₂	Kohlenstoffdioxid
COVID-19	Corona virus disease-2019/Coronavirus-Krankheit-2019
CMA	Competition and Markets Authority
CT	Computer Tomographie Scanner
DG Competition/DG Comp	Directorate-General for Competition
DI	Diplom-Ingenieur / Diplom-Ingenieurin
DOSB	Deutscher olympischer Sportbund
Dr.	Doktor/Doktorin
eCG	eBay Classifieds Group

Abkürzungsverzeichnis	
ECN	European Competition Network
EDV	elektronische Datenverarbeitung
EK	Europäische Kommission
ELAK	elektronischer Akt
ELSA	European Law Students' Association
ERV	Elektronischer Rechtsverkehr
etc.	et cetera
EU	Europäische Union
EuG	Gericht der Europäischen Union
EuGH	Europäischer Gerichtshof
EUR	Euro
EUS	Endoskopische Ultraschall-Systeme
EWR	Europäische Wirtschaftsraum
ff	fortfolgend
FH	Fachhochschule
FKVO	Fusionskontrollverordnung
FWBG	Faire-Wettbewerbsbedingungen-Gesetz
GCR	Global Competition Review
GD	Generaldirektor, Generaldirektion
gem	gemäß
ggfs	gegebenenfalls
GIF	Graphics Interchange Format
GmbH	Gesellschaft mit beschränkter Haftung
GMP	Good Manufacturing Practice
GWB	Gesetz gegen Wettbewerbsbeschränkungen
GPP	guiding policies and procedures for international cooperation
Hon.-Prof.	Honorarprofessor
Hrsg	Herausgeber
H3A	Hutchison Drei Austria
ICN	International Competition Network
idF	in der Fassung
iHv	in (der) Höhe von
Inc.	Incorporated
inkl.	inklusive
insb	insbesondere
IOC	Internationales Olympisches Komitee
iSd	im Sinne der/s
iSv	im Sinne von
IT	Informationstechnik

Abkürzungsverzeichnis	
IV	Industriellenvereinigung
KartG	Kartellgesetz 2005
KaWeRÄG	Kartell- und Wettbewerbsrechts-Änderungsgesetz 2021
Kfz	Kraftfahrzeug
KG	Kartellgericht
KGaA	Kommanditgesellschaft auf Aktien
KOG	Kartellobergergericht
KommAustria	Kommunikationsbehörde Austria
KWR	Karasek Wietrzyk Rechtsanwälte GmbH
LGH	Lebensmittelgroßhandel
lit	littera
LL.M.	Master of Laws
LSE	London School of Economics
MA	Master of Arts
M.Jur.	Magister Juris
Mag.	Magister/Magistra
Mio	Million(en)
MNO	Mobile Network Operator / Mobilfunkbetreiber mit eigenem Kern- und Zugangsnetz
Mrd	Milliarde(n)
MSc	Master of Science
MVNE	Mobile Virtual Network Enabler / Anbieter von Infrastruktur um als MVNO arbeiten zu können
MVNO	Mobile Virtual Network Operator / Mobilfunkbetreiber ohne eignes Kern- und Zugangsnetz
OC	Olympische Charta
OECD	Organisation for Economic Cooperation and Development
OG	Offene Gesellschaft
OGH	Oberster Gerichtshof
OLG	Oberlandesgericht
ORF	Österreichischer Rundfunk
ORF-G	ORF-Gesetz
ÖGB	Österreichischer Gewerkschaftsbund
ÖOC	Österreichisches Olympisches Comité
ÖPAG	Österreichische Post AG
ÖZK	Österreichische Zeitschrift für Kartellrecht
Qu.	Quartal
Prof.	Professor/Professorin
Pkw	Personenkraftwagen

Abkürzungsverzeichnis	
PU	Polyurethan
RA	Rechtsanwältin/Rechtsanwalt
RL	Richtlinie
RTR	Rundfunk & Telekom Regulierungs-GmbH
s	siehe
SARS-CoV-2	severe acute respiratory syndrome coronavirus type 2 / schweres akutes respiratorisches Syndrom Coronavirus-2
SIEC	Significant Impediment to Effective Competition
sog	sogenannt(e/er/es)
SSK	Speditionssammelladungskonferenz
StPO	Strafprozessordnung
Stv	Stellvertreter(in)
TKG	Telekommunikationsgesetz
ua	unter anderem
UDE	Äußerliche Ultraschall Systeme
UME	Ultrasound Monitoring Equipment
UNCTAD	United Nations Conference on Trade and Development
usw.	und so weiter
UTP	unfair trading practices
uvm	und vieles mehr
UWG	Bundesgesetz gegen den unlauteren Wettbewerb
va	vor allem
VAB	Verwaltungsakademie des Bundes
v.l.n.r.	von links nach rechts
vgl	vergleiche
VO	Verordnung
WBK	Wettbewerbskommission
WettbG	Wettbewerbsgesetz
WKÖ	Wirtschaftskammer Österreich
WKStA	Wirtschafts- und Korruptionsstaatsanwaltschaft
WU	Wirtschaftsuniversität
Z	Ziffer
zB	zum Beispiel
zT	zum Teil

7.5 Priority recommendations of the CoCo to the FCA

Proposals of the Competition Commission pursuant to § 16 (1) of the Austrian Competition Act to the Federal Competition Authority for priorities in the discharge of its tasks in the calendar year 2021:

1. Introductory remarks

Within the framework of the annual submission of a priority recommendation for the work of the Federal Competition Authority (FCA), as provided for in the Competition Act, the Competition Commission (CoCo) takes the opportunity to point out, from its point of view, those areas that suggest more in-depth and ongoing work in the interest of fair competition. In developing these recommendations, the CoCo draws on findings from its ongoing work and on information it has received, and endeavours to focus the priority recommendation on those areas of competition policy whose more in-depth treatment by the FCA can be expected to be of maximum benefit.

The CoCo's previous priority recommendations can be seen on the FCA's website. Some of the previous recommendations are still particularly topical and relevant due to developments (especially those on the subject of online trade).

2. Priority recommendation for 2021

a) Competition monitoring

For 2019 and 2020, the CoCo recommended targeted competition monitoring in the sense of preliminary investigations of specific sectors, which may subsequently lead to a full sector enquiry. The energy sector, online trade and service platforms were mentioned as possible sectors (see immediately below).

Another sector to be mentioned, not least against the background of the COVID-19 experiences, would be the health sector (e.g. also the price development of hygiene articles and non-prescription medicines).

b) Energy sector

The CoCo has repeatedly recommended the electricity and gas sectors for focus and continuous monitoring, as it has done in recent years. The area of grid-based energy (electricity, gas, district heating) is a "permanent topic of

competition policy” due to the economic importance of these sectors. It is recommended that (together with E-Control), in addition to grid-based energy, the competitive effects of the Federal Energy Efficiency Act in particular be closely monitored. Special attention should be paid to the development of electricity prices after the separation of the German-Austrian electricity market on 1 October 2018. The competition-relevant question is now whether and to what extent the introduction of the electricity price zone leads to unjustified price increases. Another factor in determining the retail price is the development of wholesale prices. With regard to the question of whether falling wholesale prices are passed on to end customers just as regularly and quickly as rising prices, competitive monitoring appears to make sense.

c) Online trade

In view of the steadily growing market power of global and network-based international companies based outside the EU, the last two years have recommended examining the competitive conditions in online trade and, if necessary, initiatives to ensure a level playing field for all players (see in more detail the CoCo's priority recommendation for 2019 and 2020).

Therefore, the CoCo recommended to the FCA to place a special focus on the investigation of online trade, especially in the context of deliveries from third countries (especially China). This raises questions not only of competition law in the narrower sense, which are relevant for the FCA, but in any case also of location policy. Thus, it can be assumed that Austria will lose jobs, income tax, VAT and social security contributions, etc., and that companies operating in Austria will be increasingly exposed to competitive disadvantages. Since, in addition to issues of competition law, questions of location policy also arise, the CoCo suggested setting up a corresponding task force that could take a closer look at this cross-competence topic – if possible with the involvement of other ministries with responsibility in this area. Against the background that this is at least an EU-wide problem, the CoCo recommended EU-wide cooperation between competition authorities (including the European Commission) and ministries.

d) Service platforms

Digitalisation also poses new challenges for competition enforcement, especially in connection with large platforms. Practices such as “dimming” or “de-ranking” by large online platform operators can lead to massive distortions of competition. The CoCo therefore recommends furthermore that the FCA

monitor compliance with the framework conditions under competition law on various service platforms accordingly. In particular, those companies whose main business activity is the collection of data or that have the corresponding market power should be examined more closely. Another important building block is the establishment of the FCA by the BMDW as an authority with the power to take legal action (together with the Schutzverband gegen unlauteren Wettbewerb (an association founded to combat unfair competition) and the AEC) for the enforcement of the P2B Ordinance. Close cooperation between the FCA and RTR facilitates positive synergies here.

e) Digitalisation – Algorithms

The FCA should therefore continue to deal intensively with future-oriented topics, such as the influence of algorithms, and further expand its relevant expertise in these areas together with RTR and continue to focus the attention of its activities on this topic area.

The manifold application of algorithms in the digital economy carries the risk of the emergence of new forms of behavioural coordination. The FCA's active enforcement activities in the area of the digital economy are intended to generate the experience and specific use cases on the basis of which an adjustment of the legal framework would have to be made. In this context, it is recommended to make more use of the instrument of interim injunctions.

f) Horizontal cooperation

Austrian and European legislators should exploit the possibilities for improving legal certainty in desirable horizontal cooperations, for example in the field of climate and environmental protection or in the digital economy (e.g. by extending the ordinance authorisation in § 3 of the Austrian Cartel Act). In this context, it is welcomed that the FCA carries out non-binding assessments of complex horizontal issues at the request of companies and associations. This offer should be further expanded.

g) Health sector

The COVID-19 crisis in particular has illustrated the importance of the health sector and related issues such as laboratory costs and availability of protective clothing and (future) vaccines. However, the significance of these topics goes beyond competition law (economic national defence; sufficient self-sufficiency in health matters). In the healthcare sector, availability of effective healthcare

to all is important. The investigations started by the FCA in certain sub-markets of the health care market are to be continued.

h) Bid-rigging

Not only does bid-rigging damage the tendering body, and thus often the taxpayer, but it can even lead to market foreclosure, so that companies that do not participate in the bid-rigging do not get a chance. By detecting and prosecuting such collusion, the FCA can achieve a special and general preventive effect. This serves both Austria as a business location and the end consumers.

3. Concluding remarks

Reliable and efficient enforcement of competition law is an essential advantage for Austria as a business location. The FCA should therefore continue to guarantee independence, efficiency, transparency and fast procedures.

In addition, reference may be made at this point – even though it is primarily addressed to the legislator – to the position paper “Current Challenges for Modern Competition Law – Recommendations for Action for European and National Legislators”, which was completed in September 2020 and was jointly written by the FACO, IV, LKO, AFTU and AEC. It also contains recommendations and ideas for the further development of European and Austrian competition law derived from the considerations made.

The CoCo thanks the FCA for the measures already taken and the exchange of ideas and experiences that has taken place, and wishes it continued success in its activities to improve the competitive situation.

Vienna, 5 October 2020

Hon. Prof. DDr. Jörg Zehetner
Chairman of the Competition Commission

